

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

IN RE: Sealander Brokerage
809 Virginia Avenue, SE
Washington, DC 20003

Service Address:
810 L Street, SE

Account No: [REDACTED]
Case No: 2018-09-26

Amount in Dispute - \$ 1,262.52

Before Janet W. Blassingame, Hearing Officer
March 7, 2019 at 1:00 p.m. (changed to 11:00 a.m.)

The customer contested a water and sewer bill for the above account for the period of time March 13, 2018 to May 10, 2018. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on March 7, 2019. Present for hearing were: Tia Ballenger, Office Administrator for Sealander Brokerage; Eileen Wright, Communication Specialist, DC Water, on behalf of DC Water; and as observers only, were: Arlene Andrews, Communication Agent, DC Water; and, Geneva Parker, Manager, Customer Care Services, DC Water.

The property involved is a duplex building having two (2) apartment units. Each unit has one bathroom and one kitchen. The building has radiators and one outside faucet. There is a washing machine in the upper unit. One water meter monitors usage for the both units. The property has been owned by Washington Naval Yard Associates, LLC for more than fifteen (15) years and the water and sewer bill for the property has historically been One Hundred Dollars (\$100.00) or less each billing cycle.

Ms. Ballenger testified that the water and sewer bill was Three Hundred Dollars (\$300.00) in April 2018 but was Nine Hundred Fifty-one Dollars (\$951.00) in May 2018. She testified that she immediately contacted the tenants at the property to inquire as to any plumbing issues and she was told that no one was aware of any leaks. Ms. Ballenger testified that she, next, contacted TTC General Construction LLC (TTC) to inspect the property for plumbing issues and the plumber found no leaks. Ms. Ballenger stated that the plumber was actually at the property twice- end of April 2018 and the end of May 2018. The customer submitted a copy of the invoice from TTC which was dated May 31, 2018 and indicated that the interior and exterior of the property was inspected for leaks on 4/25/18 and 5/31/18. The invoice stated that no signs of leakage were found, no repairs were required and that the water meter did not turn.

Ms. Ballenger testified that she requested that DC Water conduct a further investigation

of what might have caused increased water usage at the property; the customer stated that DC Water's reply was to send to her its investigation report which indicated that no adjustment was warranted, the charges were valid and that the account had been billed based upon actual meter readings.

Ms. Wright stated that DC Water's position is that the charges are valid based upon the meter readings from the property. Ms. Wright explained that there was an AMR meter at the property with a MTU device that transmitted meter reads from the property on an hourly basis. She stated that there was sporadic high usage registering on the water meter during the period in dispute. Ms. Wright testified that on April 6, 2018 between 8:00 p.m. and 9:00 p.m. to April 7, 2018 between 3:00 p.m. and 4:00 p.m., high water usage was occurring at the property. Ms. Wright testified that high water usage again registered at the property April 7, 2018 between 10:00 p.m. and 11:00 p.m. to April 10, 2018 at 8:00 a.m. Ms. Wright stated that the usage record on the property reflected that there were several additional spikes occurring after April 10, 2018 until the spikes stopped on May 14, 2018 but that there have been very small spikes even thereafter. Ms. Wright stated that the high usage at the property was on an on-again/off-again pattern and based upon her experience in reviewing and dealing with issues of high-water consumption, the spikes that occurred at the property imply that an internal fixture such as a toilet flapper or a not closing ballcock in a toilet, was most likely the cause of the high-water usage.

Ms. Wright testified that DC Water removed the water meter from the property for testing on July 5, 2018 and the meter was determined to have 101.26% accuracy which, according to standards set by the American Water Works Association (AWWA), indicate that the meter was functioning appropriately. Ms. Wright stated that, according to the AWWA, the accepted range of water meter accuracy is 98.5% to 101.5%.

Ms. Wright further testified that DC Water has able to rule out the existence of an underground leak as a possible cause of the occurring high water usage because meter periodically stopped and when an underground leak is presence the meter would have continued to run and until the leak was repaired.

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

FINDINGS OF FACT

1. The property involved is duplex housing with two (2) apartment units. (Testimony of Tia Ballenger)
2. The period in dispute is March 13, 2018 to May 10, 2018. (Testimony of the parties)
3. High water usage registered on the property's water meter between April 6, 2018 and May 14, 2018; usage was not continuous but was described as an on-again/off-again pattern. (Testimony of Eileen Wright; DC Water Meter Read record)
4. The building tenants denied the existence of any plumbing problems. (Testimony of Tia Ballenger)
5. The manager of the property hired a company to inspect the property for plumbing issues

and no leaks were detected; the inspections took place on 4/25/18 and 5/31/18. (Testimony of Tia Ballenger; TTC General Construction LLC Invoice dated May 31, 2018)

6. DC Water removed the water meter from the property for testing and the meter was determined to have 101.26% accuracy. (Testimony of Eileen Wright)
7. DC Water ruled out the existence of an underground leak as a possible cause of high-water usage occurring at the property because such usage was sporadic and the registration on the meter would stop and the nature of an underground leak is such that the leak would continue until repairs are performed. (Testimony of Eileen Wright)

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 failed to establish that more likely than not the bill in dispute was wrong or for some other reason, the customer should not be responsible for payment of the water and sewer charges.

The evidence and testimony presented during the hearing established that DC Water billed the customer during the period in dispute based upon hourly meter reads transmitted from the property by a MTU device on the water meter. DC Water tested the water meter and the

meter was determined to be registering water usage within accepted accuracy range. The utility, further, was able to rule out the existence of an underground leak as the culprit causing the increased usage at the property; an underground leak was ruled out based upon the nature of such leaks in that they require repair before they will stop and, in this case, the usage was sporadic, not continuous.

On the customer's part, the evidence and testimony established that the tenants were unaware of any plumbing problems or leaks at the property and that a plumber, on two (2) separate inspections, did not find evidence of any leaks. The plumber, also, noted that the meter was not running during the inspections of the property and that finding is significant in that the usage was described as sporadic, meaning that it was on-again/off-again and, as such, during the plumber's inspections the usage might have been simply not occurring at that particular time.

Pursuant to 21 DCMR 408, when all tests and checks find nothing wrong at a property and the cause of water usage is unknown, DC Water is barred from adjusting the customer's account.

DC Water speculated that the increased water usage was due to a toilet. The utility did not test the toilets at the property and when the plumber did so, no leaks were found. On the other hand, the meter was found to be functioning properly, the utility had all of the meter reads documenting the increased usage and when the usage occurred at the property, and, the utility established that the increased usage was not due to an underground leak. Accordingly, weighing all of the evidence and testimony, the weight of the evidence favors DC Water because the utility clearly established that the usage occurred and its equipment and service was not at fault. In the end, the property owner is responsible for what occurs on the property and since the utility is not at fault, the water and sewer charges are properly the responsibility of the owner.

Based upon the foregoing, the Hearing Officer determines that the determination by the DC Water that the charges are valid and no basis exists for adjustment of the customer's account is correct and, as such, the same is hereby AFFIRMED.

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

Date: May 14, 2019

Copy to:

Sealander Brokerage
809 VA. Avenue, SE
Washington, DC 20003

Attention: Ms. Tia Ballenger

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

IN RE: Delaware Avenue Baptist Church
1301 V Street, SE
Washington, DC 20020

Account No: [REDACTED]

Amount in Dispute - \$ 1,807.34

Before Janet W. Blassingame, Hearing Officer
March 7, 2019 at 1:00 p.m.

ORDER OF DISMISSAL

This matter was originally scheduled for hearing on January 31, 2019 and was rescheduled for hearing for March 7, 2019 based upon representations regarding a conversation between Eileen Wright, representative of DC Water, and Toni Hawkins representative of Delaware Avenue Baptist Church. On January 31, 2019, Ms. Wright represented to the Hearing Officer that she spoke with a representative of the Church by telephone on January 30, 2019 and that the customer was aware of the scheduled hearing and planned to appear. Ms. Wright stated that she had no idea why no one had appeared on behalf of the customer and because customers were having difficulty finding DC Water's new location, she believed that the customer would appear. Based upon Ms. Wright's representations, the customer was afforded a grace period longer than the customary thirty (30) minute grace period. When the customer had not appeared one hour after the scheduled time for hearing, Ms. Wright called Toni Hawkins, the designated contact person for the customer. Based upon her contact and conversation with Ms. Hawkins, Ms. Wright informed the Hearing Officer that the person designated to represent the Church at the hearing had gone to the wrong location and the customer requested that the hearing be rescheduled. Ms. Wright indicated that DC Water had no objection to a continuance. As such, the case was continued and rescheduled.

The customer contested water and sewer bills for the above account for the period of time July 26, 2018 to August 23, 2018. DC Water investigated the water and sewer charges and determined that the charges were valid and no adjustment of the account was warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on March 7, 2019. Present for hearing was Eileen Wright, Communication Specialist, DC Water, on behalf of DC Water.

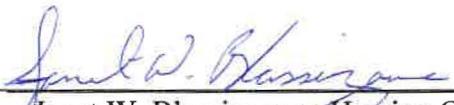
Ms. Wright represented that she spoke with both Toni Hawkins and Minister Young of Delaware Avenue Baptist Church on March 6, 2019 and each acknowledged that the matter was scheduled for hearing today, March 7, 2019, and they knew the location of the hearing. When the customer (its representatives) failed to appear after thirty-five (35) minutes beyond the scheduled start time for the hearing, Ms. Wright, in the presence of the Hearing Officer,

telephoned Toni Hawkins and got a voice mail answer.

The customer was afforded a total grace period of one hour and five minutes and although the hearing was delayed until 3:05 p.m., the customer failed to appear. The letter of notification that was sent to the customer advised that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3)

The Hearing Officer determines that, based upon the record in this matter, dismissal of this matter is appropriate pursuant to 21 DCMR 416.2(a), in that customer was previously afforded an opportunity for a hearing and failed to appear, failed to appear a second time and has not preserved its right to a hearing.

As such, based upon customer's failure to appear for two (2) scheduled hearings of this matter and its failure to request in advance that the hearing(s) be postponed, this matter is hereby DISMISSED with prejudice based upon the failure of the customer to prosecute its dispute. Accordingly, the determination by DC Water that the charges are valid and no adjustment to the account is warranted is hereby affirmed.

By: 
Janet W. Blessingame, Hearing Officer

Date: May 14, 2019

Copy to:

Ms. Toni Hawkins
Delaware Avenue Baptist Church
1301 V Street, SE
Washington, DC 20020

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

IN RE: [REDACTED]
[REDACTED] Alabama Avenue, SE
Washington, DC 20020

Account No: [REDACTED]

Amount in Dispute - \$ 538.12

Before Janet W. Blassingame, Hearing Officer
March 12, 2019 at 10:00 a.m.

ORDER OF DISMISSAL

The customer contested a water and sewer bill for the above account for the period of time December 20, 2017 to January 18, 2018. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and no adjustment of the account was warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on November 27, 2018, January 10, 2019 and March 12, 2019. Regarding the hearing scheduled for January 10, 2019, the customer emailed DC Water on January 8, 2019 that he was in Atlanta and would not be back in D.C. until the end of the month. Based upon the customer's representations, DC Water agreed to continue the matter for hearing and the matter was rescheduled for hearing on March 12, 2019 at 10:00 a.m.

On March 12, 2019, Eileen Wright, Communication Specialist, DC Water, appeared for the hearing on behalf of DC Water.

The customer was afforded an extended grace period, however, because he failed to appear by 10:50 a.m., Ms. Wright, in the presence of the Hearing Officer and on speaker phone, telephoned Mr. [REDACTED], who answered the phone. When Ms. Wright advised the customer that she and the Hearing Officer were awaiting his appearance for the scheduled hearing, Mr. [REDACTED] stated that he was out-of-town. Mr. [REDACTED] stated that he did not notify DC Water of his inability to attend the scheduled hearing because his being out-of-town was based upon an emergency. Ms. Wright stated to the customer that he would not be rescheduled for another hearing and Mr. [REDACTED]'s response was that it was fine with him that his dispute would not be rescheduled for hearing.

The Hearing Officer concurs with DC Water's position that this matter should not be rescheduled for hearing. The Hearing Officer finds that the customer was previously afforded an opportunity for a hearing on two (2) scheduled hearing dates and has now failed to appear and has not preserved his right to a hearing. As such, just cause exists for dismissal of this matter and dismissal is appropriate. This matter is hereby **DISMISSED** with prejudice based upon authority found in 21 DCMR 416.2(a), upon the failure of the customer to prosecute his dispute and the

determination by DC Water that the charges are valid and no adjustment to the account is warranted is hereby AFFIRMED.

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

Date: May 19, 2019

Copy to:

Mr. [REDACTED]
[REDACTED] Alabama Avenue, SE
Washington, DC 20020

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

IN RE: [REDACTED] & [REDACTED]
[REDACTED] Porter Street, NW
Washington, DC 20008

Account No: [REDACTED]
Case No: 20190111

Periods and Amounts in Dispute:

7/4/18 to 8/2/18-	\$300.61
8/3/18 to 9/5/18-	\$277.17
9/6/18 to 10/2/18-	\$267.78
10/3/18 to 11/1/18-	\$269.36

Before Janet W. Blassingame, Hearing Officer
March 13, 2019 at 10:00 a.m.

The customer contested water and sewer bills for the above account for the period of time July 4, 2018 to November 1, 2018. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the customer's dispute of the periods ending 8/2/18, 9/5/18 and 10/2/18 were untimely. Despite its determination, the utility accepted the customer's Administrative Hearing Petition and scheduled this matter for hearing for dispute of charges from 7/4/18 to 11/1/18.

This matter was scheduled for hearing on March 13, 2019. Present for hearing were: [REDACTED]; Eileen Wright, Communication Specialist, DC Water, on behalf of DC Water; and Arlene Andrews, Communication Agent, DC Water, as an observer.

The property involved is a semi-detached single-family residence owned and occupied for the past twenty (20) years by [REDACTED] and her husband. Mrs. [REDACTED] stated that her youngest son left for college in August 2018, so she and her husband are the sole occupants of the house except for when the children are home on holiday or for visits.

The property has three and one-half (3 ½) bathrooms, a kitchen, radiators, a washing machine, a dishwasher and two (2) outside faucets. Historically, the water and sewer bills range between \$114.00 and \$140.00 per billing cycle.

Ms. [REDACTED] testified that she paid the water and sewer charges billed in August 2018 and September 2018, however, she contacted DC Water in October 2018 when she realized that the charges for water and sewer service were double the amount charged in the past. The customer stated that she listened for any running of her toilets and she did not hear anything and she inspected the house for leaks and saw no drips. She stated that she had purchased no new appliances and had not had any plumbing work performed. She stated that she did not contact a plumber to inspect the house after she realized an increase in water and sewer charges. Ms. [REDACTED] stated that DC Water scheduled and sent out a technician to inspect the house. She stated that a DC Water technician initially came out to her house but only looked at the water meter. Ms. [REDACTED] testified that a DC Water technician came out to her house a second time

and conducted an audit on November 2, 2018 by putting dye into the toilets; she stated that the technician found no leaks. Ms. [REDACTED] stated that she, again, contacted DC Water on November 30, 2018 and was told to expect an investigation letter from the utility. Ms. [REDACTED] testified that water usage at the property declined in December 2018.

The customer stated that DC Water informed her that her dispute of the charges was untimely. The customer complains that DC Water's letters to her were not sent in a timely manner and that the utility has assessed her account late charges.

Ms. Wright stated that DC Water considers the charges to the customer's account to be valid. She explained that the customer has at her property an AMR meter with an MTU device that transmits reads from the water meter. Ms. Wright testified that a new system was not picking up reads between October 27, 2017 to March 30, 2018 but that the utility has actual meter reads from the property transmitted by the MTU for the periods in dispute. Ms. Wright testified that according to meter reads from the property, there was continuous water usage starting July 4, 2018 and usage did not end until July 13, 2018. Ms. Wright testified that she can see that water usage at the property stopped for a period of time on July 20th and on July 21st. Ms. Wright asserted that usage would never have stopped if the cause of the usage were on the service line. Ms. Wright stated that because water usage was sporadically stopping, something was being turned off at the property. Ms. Wright testified that she observed from the meter reads that a pattern of on-again/off-again water usage was occurring at the property up until October 20, 2018.

Ms. Wright testified that DC Water removed the water meter for testing and the meter was determined to have 100.18% accuracy which is within the accepted standards for water meter accuracy as established by the American Water Works Association. Ms. Wright stated that the accepted standard of range is 98.5% to 101.5% for water meter accuracy. Ms. Wright testified that the high-water usage was not caused by an underground leak because usage stopped and such leaks require repair in order for the leak to stop and DC Water made no such repair.

Ms. [REDACTED] complained that DC Water's representative did not provide to her, when she called the utility, an explanation of the usage.

Ms. Wright stated that the service technician, who inspected the property, failed to find any leaks because by the time of the audit, the high-water usage had declined/stopped. Ms. Wright further asserted that the high-water usage declined prior to removal of the water meter for testing and that, based upon her experience in reviewing water disputes, the high usage most likely was the result of a toilet and that 99% of the time high water usage is due to a toilet. Ms. Wright suggested that the customer register for HUNA, the high usage notification alert program offered by DC Water. Ms. Wright pointed out that, looking at the meter reads from the property dated March 5 and March 6, 2019, the reported water usage is again consistent with the family's work/living pattern in that no one is at home during the day.

Ms. Wright acknowledged that the customer's account should not have been assessed late charges during the pendency of the dispute and she stated that there were reflected two one percent (1%) penalties of \$.03 and \$1.25, respectively, and that she would adjust the customer's

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 residence owned and occupied by [REDACTED] and her husband. (Testimony of [REDACTED])
2. The periods in dispute are from July 4, 2018 to November 1, 2018. (Testimony of the parties)
3. The customer did not contact DC Water to dispute her water and sewer charges until October 2018 and as such, the utility declared that her dispute of charges billed 8/2/2018, 9/5/2018 and 10/2/2018 was untimely. Despite its finding of untimeliness of dispute, the utility investigated the charges and scheduled the customer's dispute of all charges for hearing. (Testimony of the parties)
4. Continuous high-water usage was reported occurring at the property from July 4, 2018 until July 13, 2018 and thereafter an on-again/off-again usage pattern was reported occurring at the property resulting in higher water consumption than historically used by the customers until October 20, 2018. (Testimony of Eileen Wright)
5. The customer was unaware of high-water usage occurring at the residence and she did not observe and had no knowledge of any leaks or running toilets during the periods in dispute. (Testimony of [REDACTED])
6. After October 20, 2018, water usage at the property returned to its historical levels and pattern of usage has been consistent with the customer's work/at-home pattern as described by the customer. (Testimony of the parties)
7. DC Water sent a service technician to inspect the property and no leaks were detected. (Testimony of the parties)
8. DC Water removed and tested the water meter and the meter was determined to have 100.18% accuracy. (Testimony of Eileen Wright; DC Water Meter Test Results)
9. DC Water ruled out the existence of an underground leak as a possible cause of the high-water usage, based upon the fact that usage at the property would stop and re-start and a characteristic of an underground leak is that such leaks will not stop until repairs are performed to stop the leak and no such repairs were performed at the property. (Testimony of Eileen Wright)

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. 21 DCMR § 412.2 (1999) is merely a claim-processing rule, which the agency waived by consenting to a hearing on the merits before a D.C. Water hearing officer. David Gatewood v. District of Columbia Water and Sewer Authority, 82 A.3d 41, D.C. court of Appeals 2013.
3. 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
4. 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

In this case, DC Water initially took the position that the customer's dispute of her bills dated 8/2/2018, 9/5/2018 and 10/2/2018 was untimely, however, the utility included the bill periods deemed to be the untimely challenges within the disputed period for administrative hearing of contested charges. Thus, the utility waived its rule of when to challenge a water bill.

The customer testified that she was unaware of any leaks or plumbing issues within her home during the periods in dispute and that a DC Water service technician inspected her residence and found no leaks. Based upon her unrebutted testimony, the customer established a prima facie case of non-responsibility and the burden of evidentiary production shifted to DC Water. The burden of persuasion always, however, stays with the customer and, in the end, the customer was unable to establish that more likely than not the bill in dispute was wrong or for some other reason, the customer should not be responsible for payment of the water and sewer charges.

As stated, the customer testified that she had no knowledge of leaks or plumbing issues at her property. The evidence and testimony presented during the hearing established that DC Water billed the customer during the period in dispute based upon meter reads transmitted from the property by a MTU device on the water meter. DC Water sent a service technician to the residence to test for leaks and no leaks were detected. The utility also tested the water meter and the meter was determined to be registering water usage within accepted accuracy range. The utility, further, was able to rule out the existence of an underground leak as the culprit causing the increased usage at the property; an underground leak was ruled out based upon the nature of such leaks in that they require repair before they will stop and, in this case, the usage was sporadic, not continuous. The utility further provided an explanation as to why its service technician failed to find any cause of the increased water usage which registered on the water

meter by its representative pointing out that the high-water usage ended before the technician conducted the audit of the property and, as such, high water usage was not occurring when the property was inspected for leaks.

Pursuant to 21 DCMR 408, when all tests and checks find nothing wrong at a property and the cause of water usage is unknown, DC Water is barred from adjusting the customer's account.

DC Water speculated that the increased water usage was due to a toilet. Even though the no toilet leak was found on inspection by the service technician, the utility's explanation that the high usage had stopped by time of inspection is a plausible explanation as to why no leak was found. On the other hand, the meter was tested and found to be functioning properly. The utility had all of the meter reads documenting the increased usage and when the usage occurred at the property. The utility, further, established that the increased usage was not due to an underground leak.

Accordingly, weighing all of the evidence and testimony, the weight of the evidence favors the utility and, as such, the utility is entitled to payment of its charges for water usage.

Based upon the foregoing, the Hearing Officer determines that the determination by the DC Water that the charges are valid and no basis exists for adjustment of the customer's account is correct and, determination is hereby AFFIRMED.

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

Date: May 14, 2019

Copy to:

Ms. [REDACTED]
[REDACTED] Porter Street, NW
Washington, DC 20008

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

IN RE: Smith Public Trust
8120 Woodmont Avenue 160
Bethesda, MD 20814

Account No: [REDACTED]
Case No: 20190107

Service Address:
3514 12th Street, NE

Amount in Dispute - \$ 1,283.92

Before Janet W. Blassingame, Hearing Officer
March 13, 2019 at 2:00 p.m.

ORDER OF DISMISSAL

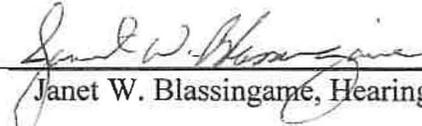
The customer contested a water and sewer bill for the above account for the period of time October 15, 2017 to November 13, 2017. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and no adjustment of the account was warranted. The utility further noted that the account had been billed based upon actual meter readings. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on March 13, 2019. Present for hearing were Eileen Wright, Communication Specialist, DC Water, on behalf of DC Water and Arlene Andrews, Communication Agent, DC Water, as an observer.

The customer was afforded an extended grace period of forty-five (45) minutes and although the hearing was delayed until 2:45 p.m., the customer failed to appear. The letter of notification that was sent to the customer advised that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3)

Ms. Wright stated that even though DC Water initially determined that no basis existed to adjust the customer's account, the utility has reversed its position and the customer has been given an adjustment in the amount of \$549.85 for the period October 5, 2017 to October 25, 2017. Ms. Wright stated that the adjustment has been made, however, she had no indication from the customer as to whether the customer was satisfied with adjustment.

Based upon Ms. Wright's representation that the customer's account has been adjusted and the customer's failure to appear for the hearing, the Hearing Officer finds that this matter is no longer at issue and is moot. Accordingly, the customer's Petition for Administrative Hearing is hereby DISMISSED.

By: 
Janet W. Blassingame, Hearing Officer

Date: May 19, 2019

Copy to:

Smith Public Trust
8120 Woodmont Avenue 160
Bethesda, MD 20814

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

IN RE: Christian Tabernacle Church of God Inc.
2033 11th Street, NW
Washington, DC 20001

Account No: [REDACTED]
Case No: 20181174

Amount in Dispute - \$ 3,916.30

Before Janet W. Blassingame, Hearing Officer
March 19, 2019 at 11:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time May 2, 2018 to June 4, 2018. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on March 19, 2019. Present for hearing were: Darrell Goodwin, Finance Director, Christian Tabernacle Church of God Inc; Kevin Hart, Pastor, Christian Tabernacle Church of God Inc.; Eileen Wright, Communication Specialist, DC Water, on behalf of DC Water; as well as, Arlene Andrews, Communication Agent, DC Water and Kim Arrington, Supervisor, Customer Support, DC Water, as observers.

The property involved is the site of Christian Tabernacle Church of God Inc. (the Church) which has a congregation of 125 -175 members. Services are held at the Church on Sundays, and, during the weekdays, there is bible study and choir rehearsal held at the Church. Mr. Goodwin stated that an administrative meeting is held monthly at the Church and outreach activities are also conducted on some Saturdays. The church building has bathroom facilities for women and for men; each bathroom has two (2) stalls and sinks. There are two (2) outside faucets on the building; one faucet is capped.

Pastor Hart stated that the months of May and June are down months for the church, in that, no weekday services are held and no outreach programs are conducted.

Mr. Goodwin stated that the Church's water and sewer bill is normally approximately Fifty Dollars (\$50.00) per billing cycle. He indicated that, with respect to the challenged high bill, the church's bill in July, 2018 was back to within normal range at Fifty-four Dollars (\$54.00).

Both Mr. Goodwin and Pastor Hart stated that the practice at the church is for the deacons and finance officer (Mr. Goodwin) to monitor the church property for problems and the routine is to check the building and, particularly, the bathrooms around 8:00 a.m. each Sunday prior to start of church services. Mr. Goodwin stated that the facilities are also sometimes checked on Saturday, as well. Mr. Goodwin testified that the church had Michael & Son Services come out in August 2018 to inspect the property. Mr. Goodwin stated that the plumber did a

walk-thru of the church and that no leaks were found. Mr. Goodwin stated that the plumber gave some cosmetic suggestions, such as that a shut-off valve should be installed. He stated that the plumber did replace the wall valve in the basement. Pastor Hart interjected that the church basement is only a partial basement and that he observed the water meter sitting on the floor six (6) years ago. Pastor Hart stated that the valve referred to by the plumber was a valve connected to the water heater. Pastor Hart testified that the plumber found a leaking pipe in the crawl space and the solution was that Michael & Son installed a ¾" shut-off valve. He testified that he had not noticed any running toilet or sitting water on any floor. He stated that he did not think that the plumbing work performed at the church impacted water usage because water usage was down. Pastor Hart testified that work was being done on the street by the church. He, also, stated that the neighbor to the church was building his own house and was constantly working on the property. He, further, stated that the plumber spoke with the church employed custodian for its daycare center and the custodian stated that DC Water was at 11th Street and V Street doing something. Pastor Hart explained that the church run daycare center is next door to the church and its address is 1100 V Street, NW. Pastor Hart stated that there is a sinkhole in the daycare's parking lot and a lot of new construction, such as new sidewalks, has been undertaken near the church and daycare facility.

Mr. Goodwin testified that after Michael & Son put on the new valve, there was no difference in billing for water service except for the spike period. Mr. Goodwin asserted that he felt that the spike was an isolated event.

Ms. Wright stated that DC Water does not install sidewalks. She stated that, looking at the record of DC Water in the vicinity of the church, she sees the following:

- August 2017- small amount of water coming from street;
- April 29, 2018- water bubbling from manhole in street;
- August 22, 2018- water bubbling from manhole in street; and
- October 3, 2018- water bubbling from manhole in street.

Ms. Wright stated that incidents in the street do not affect a customer's usage. She stated that for a customer's usage to be affected and result in increased cost to a customer, water usage must be on the customer's property and the water must flow thru the water meter.

Ms. Wright testified that DC Water considers the disputed charges to be valid based upon the meter reads from the property and its testing of the water meter. She stated that the customer has an AMR meter at the church as well as an MTU device that transmits meter reads to a data control unit. Ms. Wright presented meter reads from the property for the period May 2, 2018 to June 4, 2018. She testified that starting May 5, 2018 water started running at the church on a continuous basis and the usage did not slow down until May 28, 2018. Ms. Wright calculated that 345 CCF of water was used or wasted at the property during the 23 days of water running continuously between May 5, 2018 and May 28, 2018; she stated that the customer's daily average usage for the period was 15 CCF. By comparison, Ms. Wright asserted that between May 28, 2018 and June 4, 2018, a seven-day period, the customer's average daily usage was .146 CCF. Referring to the plumber's reports submitted by the customer, Ms. Wright noted that Michael & Son reported on August 26, 2018 that its plumber found a toilet flapper worn out, that the bathroom needed a tank rebuild, that a toilet was wobbly and that there was a possible leaking pipe.

Mr. Goodwin interjected that the Church only had the valve replaced and that it did not have the plumber replace a toilet flapper. Ms. Wright, referring to the Michael & Son report dated August 30, 2018, noted that the plumber reported having performed work on a ball valve.

Ms. Wright testified that DC Water removed the water meter from the property for testing on October 1, 2018 and that the meter was determined to have 99.78% accuracy. Ms. Wright asserted that the American Water Works Association has set 98.5% to 101.5% as the accepted range for water meter accuracy.

Ms. Wright stated that it was the conclusion of the utility that the charges were valid and that the increased usage was caused by an internal fixture or controlled outside by a faucet. She asserted that she knows that the increased usage was not due to an underground leak because the usage stopped and underground leaks require repair in order to stop such a leak.

Pastor Hart posed the question to Ms. Wright as to where the water was being used since the wobbly toilet and flapper have not been repaired? Ms. Wright responded that in her seventeen (17) years in Customer Service at DC Water, 9 out of 10 times it's a toilet causing increased usage.

Mr. Goodwin asserted that the plumber said that the toilet flapper should be replaced but he did not say that the toilet was running. Mr. Goodwin, further, reaffirmed that he never noticed a running toilet and that there have been no other spikes in water usage. He went on to question the validity of the meter test by pointing out that the spike in water usage occurred in May 2018 and the utility did not test the water meter until October 2018. Mr. Goodwin also questioned where the street water was coming from. Ms. Wright responded that the street water seen by him and others was ground water from the sewer. She also stated when a customer experiences a spike in water usage, the utility can give an opinion or speculation as to the cause or it can sometimes determine the cause of the spike.

Pastor Hart declared that never in the Church's history had it ever before had a \$3,900.00 water bill.

Ms. Wright stated that based upon what she had been told by the Meter Department of DC Water, if a water meter starts running fast, it will continue to run fast until it is removed. Ms. Wright asserted that water meters tend to slow down over time, not speed up. Just before the hearing was concluded, Ms. Wright informed the customers of DC Water's HUNA program and suggested that they register the Church for high water usage alerts by DC Water.

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 the site of Christian Tabernacle Church of God Inc. which has a congregation of 125 - 175 members. (Testimony of Darrell Goodwin and Pastor Kevin

Hart)

2. The period in dispute is May 2, 2018 to June 4, 2018. (Testimony of the parties)
3. A significant increase in water usage registered on the water meter at the church between May 5, 2018 and May 28, 2018 during which time, the meter reads reflected continuous running water at the property. (Testimony of Eileen Wright; DC Water Meter Read Log)
4. Water usage at the property significantly declined after May 28, 2018. (Testimony of the parties, DC Water Meter Read Log)
5. The Church's Financial Officer and its deacons inspect the property at least weekly for plumbing issues and during the period in dispute, no plumbing issues were detected. (Testimony of Darrell Goodwin)
6. Pastor Hart, also, did not notice any running toilets or leaks in or about the church during the period in dispute. (Testimony of Pastor Kevin Hart)
7. Michael & Son Services were called to conduct an inspection of the church in an effort to identify a cause of the high bill for water services. Michael & Son Services was at the church on August 26, 2018 and August 30, 2018. (Testimony of Darrell Goodwin, Pastor Kevin Hart; Michael & Son Diagnostic Notes dated 8/26/2018; Michael & Son Services Invoice dated 8/30/2018)
8. On 8/26/2018, Michael & Son Services conducted a plumbing inspection at the church and reported finding a toilet worn out and needing rebuilding in the basement, on the main floor the right side of the bathroom needs major tank rebuilding and left side bathroom floor broken by toilet and toilet is wobbling. The plumber further found that there was water coming in through the basement wall and that there was a possible leaking pipe in the crawl space. The plumbing recommended that the church have installed a ¾" shut off valve to insulate the water line going to the crawl space. (Michael & Son Diagnostic Notes dated 8/26/2018)
9. On 8/30/2018, Michael & Son returned to the church and installed a ¾" emergency cut off ball valve by the main water service. (Michael & Son Services Invoice dated 8/30/2018)
10. DC Water removed and tested the water meter and the meter was determined to have 99.78% accuracy. (Testimony of Eileen Wright; DC Water Meter Test Results dated 11/30/2018)
11. DC Water ruled out the existence of an underground leak as a possible cause of the reported increased water usage because no repairs were made to correct an underground leak at the property and in order for an underground leak to stop, repairs must be made. (Testimony of Eileen Wright)
12. DC Water surmised that the increased water usage which occurred at the church was the result of an internal fixture or outside faucet and that the usage declined because something was turned off internally at the property. (Testimony of Eileen Wright)
13. The only work authorized to be performed at the church by Michael & Son Services was the installation of the shut off valve in the crawl space of the Church's basement; no work was done on any toilet. (Testimony of Pastor Kevin Hart; Michael & Son Services Invoice dated 8/30/2018)
14. Water usage at the church since May 28, 2018 has been consistent with historical use patterns and there has been no other spike in water usage except for that recorded during the period in dispute. (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 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.")
3. If an underground leak or a leak not apparent from visual or other inspection 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 if requested, the utility may adjust the bill(s) for the periods during which the leak occurred by an amount not to exceed 50% of the excess water usage over the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. (See, 21 DCMR 407.3 and 407.5)
4. The repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunction water-cooled air conditioning equipment, are the responsibility of the owner or occupant. (21 DCMR 406.1)
5. If the investigation discloses leaking faucets, leaking fixtures, or similar leaks, no adjustment will be made to the bill for any portion of the excessive consumption attributable to those leaks. (21 DCMR 406.2)

DECISION

The Church, through its officials, was able to present a prima facie case that more likely than not the bill in dispute was incorrect or for some other reason the Church should not be held responsible for its payment. The prima facie case was based upon testimony that no toilets were found running in the property and there were no visible leaks causing increased water usage. The evidence and testimony further established that the spike in water usage occurred only that one time (the disputed period) during the history of the Church's water service and that water usage has declined and remained within historical usage levels since May 28, 2018. Most importantly, the evidence and testimony established that the plumbing service hired by the Church to investigate the cause of the high-water usage found a possible leak in the crawl space under the church and the plumber recommended installing a cut-off valve and the Church's representatives presented an invoice from the plumbing service evidencing that such work was performed and paid.

DC Water, for its part, conducted a meter test and determined that the meter was functioning within the perimeters of accuracy as established by the American Water Works Association. The utility was able to rule out an underground leak as the cause of the high-water usage and, using its meter reads from the property, it was able to pinpoint exactly when the high usage began and when it ended/declined. The utility, through its representative, surmised that the spike in water usage was caused most likely by a toilet or some other fixture within the church or by an outside faucet and it pointed to the diagnostic report of the plumbing service hired by the Church in which the plumber cited the need to rebuild various toilets within the property and that the floor of a toilet was found defective. The utility failed to address the plumber's finding of a possible leak in the basement crawl space of the church building and that the customer had the recommended repair performed by the plumber.

The Church submitted an invoice by Michael & Son Services reflecting that a repair was performed by installing a cut off valve to the water line in the crawl space in the basement of the Church. The representatives on behalf of the Church further pointed out that no repairs were performed on the toilets and that the only defect identified by the plumber addressed and repaired was the possible leak emanating from the crawl space and that no further spikes or evidence of increase water usage have occurred at the property.

Had the evidence and testimony been that, in fact, a toilet leak was found, the regulations bar DC Water from adjusting a customer's account for excessive water usage caused by an internal fixture. (See, 21 DCMR 406) Likewise, if no cause of the increased usage is identified after investigation, the regulations bar the utility from adjusting the customer's account unless approved by the General Manager upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest. (See, 21 DCMR 408) When a leak is not visible, however, relief is possible in certain instances. Since the crawl space was under the church in the basement in the crawl space, was not visible but under the control of the customer, the regulations dictate that the customer must have the leak repair which in this instance, the customer did have the repair performed. Pursuant to 21 DCMR 407.6 and 407.3, the General Manager of DC Water has discretionary power, upon request of the owner, to adjust a customer's bill by an amount not to exceed 50% of the excess water usage.. Pursuant to regulations, the customer is obligated to fulfil certain requirements before relief can be granted – that the owner has notified DC Water of the unusual conditions indicative of a waste of water; the owner must have taken steps to have the leak repaired promptly upon discovery; the repairs must have been by a District registered plumber; the plumber must certify that the repairs were made; and, lastly, the owner must promptly request an adjustment of the bill.

The Hearing Officer acknowledges that the plumber cited need to rebuild toilets and a defect in a bathroom floor which was recommended for work/repair, however, the arguments of the Church that these items were not addressed and yet the usage declined and no further spikes have occurred were persuasive in the representatives' position that the high-water usage was not caused by a defective toilet.



CHRISTIAN TABERNACLE CHURCH
2033 11TH ST NW
WASHINGTON DC 20001-4013

11/16/18

Dear CHRISTIAN TABERNACLE CHURCH

We have completed our investigation of charges on the 06/12/18 bill, for service address 2033 11TH ST NW

Based on the disputed charges and our investigation, we have determined the following:

No adjustment is warranted. Charges are valid. The account was billed based on actual meter readings.

The Bill Investigation Report ("Report") is enclosed. You may appeal DC Water's decision set forth in the Report by completing the attached Administrative Hearing Petition ("Petition"). We have enclosed the instructions for your convenience. Please note that your Petition must be filed within 15 calendar days of the date of this Report. Additionally, submission of your Petition does not constitute a continuous dispute. Future bills must be paid by their respective due dates.

The total account balance as of this report is \$ 3911.06

The disputed bill amount is \$ 3915.30

The amount of the balance that is past due is \$ 3911.06

The due date for current charges on the bill is 12/02/18

Please pay any past due balance by **12/02/18**

You may review applicable District of Columbia Municipal Regulations (Title 21) online at www.dcregs.dc.gov. To discuss payment options, payment arrangements, or if you have questions or concerns regarding the information contained herein, please contact our Customer Service Department on (202) 354-3600, Monday through Friday between 8:00am and 5:00pm. Thank you for contacting DC Water.

Best regards,

Eileen Wright

Agent ID 3635

Customer Service Department

The Hearing Officer further notes that the Church representative wrote in the Petition his assertion that the repair performed did not affect water usage at the Church. Mr. Goodwin wrote that Michael & Sons was contracted to help the Church provide an official case to DC Water, but, then, he went on to assert his opinion regarding the effect of the repair performed by the plumber. The Hearing Officer gives greater weight to the diagnostic findings of the plumbing than to the opinion of a non-plumber. The plumber cited the water coming in through the basement wall and finding of a possible leak in the crawl space and the Church had the leak repaired. In weighing the finding of a leak in relation to the ruling out of an underground leak by the utility, the Church's representatives testifying as to not observing any running toilet or plumbing problems during weekly inspections, and, that there have been no further spikes in water usage, the weight of the evidence and testimony points to the crawl space plumbing issue as, more likely than not, having caused the spike in water usage. Had there been evidence of a leaking toilet and its repair, the likelihood of the crawl space leak having been the cause of the spike would have been diminished or, at least, put in issue. As noted above however, the points that no work was performed on the toilets and the usage declined and the plumber not citing a leak in any toilet as oppose to stating the toilets should be rebuilt or a toilet was wobbly were factors contributing to the conclusion that the weight of the evidence supported that, more likely than not, the cause of the leak was the leak in the crawl space.

It is the conclusion of the Hearing Officer that relief is appropriate based upon 21 DCMR 407 et. al. Here, the customer contacted a plumber to investigate the cause of the high-water consumption, the plumber suspected a leak in the crawl space, the customer had the recommended repair performed, the customer submitted the plumber's report to the utility, and disputed the bill, all these actions in satisfaction of the regulations. As such, it is determined that the customer was entitled to consideration of adjustment of its account based upon the plumber finding water coming through the basement wall and a possible leak in the crawl space of the church. Accordingly, DC Water's determination that an adjustment is not warranted is REVERSED. DC Water is hereby directed to adjust the customer's account for the period May 2, 2018 to June 4, 2018 by an amount not to exceed 50% of the excess water usage over the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. The Hearing Officer recommends an adjustment of 50% but notes that the adjustment is in the discretion of the General Manager and the final determination of the appropriate adjustment is beyond the authority of the Hearing Officer.

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

Date: May 19, 2019

Copy to:

Christian Tabernacle Church of God Inc.
c/o Darrell Goodwin

2033 11th Street, NW
Washington, DC 20001

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

IN RE: Capitol Park IV Condo
c/o CFM Management Services
5250 Cherokee Avenue, Suite 100
Alexandria, VA 22312

Account No [REDACTED]
Case No: 20181288

Service Address:
210 G Street, SW

Amount in Dispute - \$ 53,741.14

Before Janet W. Blassingame, Hearing Officer
March 26, 2019 at 10:00 a.m.

The customer sought an account adjustment made by DC Water and Sewer Authority (DC Water) on water and sewer bills for the above account for the period of time October 26, 2016 to March 2, 2018. DC Water reviewed the request for an account adjustment and determined that the adjustment was appropriate and sufficient for the period January 26, 2018 to March 23, 2018. DC Water asserted that it applied the granted account adjustment pursuant to applicable regulations and the DC Water determined that the remaining charges were valid and no further adjustment of the account was warranted. The customer appealed DC Water's decision regarding the account adjustment and requested an administrative hearing.

This matter was scheduled for hearing on March 26, 2019. Present for hearing were Edward Bucaj, Property Manager for CFM Management Services; David Wilborn, CFM Management Services, Advisor, and, witness for Capitol Park IV condo; Eileen Wright, Communication Specialist, DC Water, on behalf of DC Water; Geneva Parker, Manager, Customer Services, DC Water; and, Kimberly Arrington, Supervisor, Customer Support, DC Water.

The property involved is a 243 unit townhome community which is serviced through seven (7) accounts by DC Water. The dispute involves one on the seven (7) service accounts and is predicated by discovery of an underground leak at the property. The account at issue bills for service to sixty-six (66) townhomes. David Wilborn stated that the community's historical daily usage was 12 CCF of water.

Mr. Wilborn testified that Capitol Park IV Condo (hereinafter referred to as "the customer") seeks credit against its account for water lost due to an underground pipe leak. In a letter by CFM Management Services to DC Water on behalf of the customer, the customer requested a sewer credit in the amount of \$139,766.00 based upon the assertion that it should not be charged for sewer service for water that was not returned for treatment as it was lost underground. Mr. Wilborn asserted that the customer wanted credit for lost underground water.

Mr. Wilborn testified that the leak was fixed in March 2018 and water usage went back to historical level for the units. He stated that high water usage was noticed in December 2017 and he went back looking at the condo's water and sewer bill history. Based upon his review of the reported usage, he believes that the leak started in December 2016. He asserted that water usage for the units doubled in October/November 2016 and by December 2016, usage spiked to 2581 CCF of water for the billing cycle. Mr. Wilborn stated that usage declined and he could not understand the dip in usage which occurred between May 2017 and November 2017. He stated that he figured out that the pipe involved was made of cast iron. He explained that cast iron expands in heat causing a water leak to lessen in warm weather, however, when the weather becomes cold again, the cold temperatures changed the size of the crack in the pipe causing the water loss to increase. Mr. Wilborn testified that, generally, pipes leak from a crack causing a hole, however, in this case, the leak was caused by a 360-degree break in the pipe.

Mr. Wilborn acknowledged that the customer just received its March 2019 bill statement for DC Water and that the bill reflects an account adjustment. He went on to point out that 330.78 CCF of water usage is reflective of water used since May 2018.

Mr. Wilborn testified that the leak causing the high-water usage was under a paved parking lot. He stated that American Leak Detector found the leak in February 2018 and that the leak was fixed on March 6, 2018. Ms. Wright interjected that DC Water was not contacted regarding the problem until April 16, 2018. Mr. Bucaj stated that DC Water was called in year 2017 about the water meter and that a request was made for a change of meter. He stated that the utility changed the water meter on February 13, 2017 and the water usage started to go down, however, the water usage did not return to historical level. Mr. Bucaj pointed out that the decline in water usage occurred during warm months, thus, causing them to believe that the meter change resolved the problem causing the high usage because the usage was getting better and there was no red flag to him to cause him to question further the water usage, even though the usage was double its historical level. Mr. Bucaj stated that it was not until Mr. Wilborn got involved with the customer and looking at the high-water usage issue, after the meter change, that another possible cause of the high water usage was questioned.

Mr. Wilborn stated that he got involved with the customer and its problem of high-water usage in November 2017 and he picked up on the fact that usage was far too high. He testified that the customer had thought the high-water usage was being caused by running toilets but by the time, the bill for January 2018 came into the customer from DC Water, he knew that the cause of the high usage was not running toilets. He stated that the December 2017 water and sewer bill was high but the January 2018 bill for service reflected peak usage. Mr. Wilborn testified that the issue had to be brought before the Condo Board for approval of action and that was done in January 2018. He stated that the Board authorized the work. Mr. Wilborn asserted that the process of finding and fixing the leak required a learning process and investigation before the leak could be repaired. He stated that between November 2016 and November 2017, when it was thought that the usage was caused by toilets, the units were checked for toilet leaks. Mr. Bucaj stated that all residents of the condominium were sent a letter and advised that the water service bill was extremely high. The Hearing Officer asked if the condominium utilized sub-meters and Mr. Bucaj responded in the negative and that it was/is impossible to tell which

condominium community might be causing high usage.

Mr. Bocaj elaborated that it was thought that because it was during the summer and water usage was high but down from its peak that residents were merely running more water. He stated that when the weather started getting cold, however, usage started going up again. He stated that each owner is responsible for repair of plumbing issues inside his/her respective townhome.

Mr. Wilborn asserted that because water usage went back to normal after the pipe leak was repaired, he knows that the high-water usage experienced by the condominium was not due to internal fixtures.

Ms. Parker interjected that any pipe is affected by temperature. Mr. Wilborn responded that when the pipe is made of cast iron, the hole gets larger with water passing thru it.

Ms. Wright testified that DC Water takes the position that the adjustment granted is sufficient and within the regulation guidelines. She asserted when a customer disputes bill charges, the dispute must be made within ten (10) days of receipt of the bill. Ms. Wright cited and read 21 DCMR 402.1 – 3. Ms. Wright stated that DC Water deems disputes made beyond the ten (10) day period as being untimely. Ms. Wright testified that the customer detected the leak on February 15, 2018 and the leak was repaired on March 6, 2018, however, the customer presented documents to DC Water requesting adjustment of sewer charges on April 16, 2018. She noted that the plumber's report was dated March 23, 2018. Ms. Wright asserted that the customer's request for adjustment for the period October 26, 2016 to March 1, 2018 is felt by the utility to be untimely. She stated that DC Water, despite the untimeliness of the customer's dispute, did consider the request and decided to adjust the account for the period January 26, 2018 to March 23, 2018. She stated that the adjustment was based upon 21 DCMR 407.1. She pointed out that the leak was repaired on March 6, 2018 but because the utility had not received any request for investigation of the usage, the warranted adjustment was for the period January 26, 2018 to March 23, 2018 in the amount of \$20,935.00 for 100% of the sewer charge and \$7,762.16 for 50% of the water charge, making the total adjustment in the amount of \$28,597.67.

Mr. Wilborn argued that the customer did not dispute the accuracy of the billings, however, the customer was being billed for water going into the ground- water loss underground- and DC Water was providing no service to the customer for water going into the ground.

Ms. Parker stated that the customer was given an adjustment for the most recent billing period after contact was made to the utility.

Mr. Wilborn asserted that he is aware of another case in which DC Water went back further for the adjusted account period.

Mr. Bucaj pointed out that Ms. Parker had informed him/customer that DC Water was reviewing the request for a \$53,000.00 adjustment of the account. He stated that the \$28,533.24 adjustment was reflected on the bill dated 3/21/2018. Mr. Bocaj asserted that as soon the customer figured out that there was a problem, i.e. underground leak, it took action and requested

an adjustment of the account promptly after completing a package of documents supporting the request for submission to DC Water. He asserted that the customer contacted DC Water back in year 2017 regarding the existence of a problem at the property causing high water usage.

Ms. Wright noted that on April 10, 2017, Jean Mary called DC Water on behalf of the customer for bill information. She, further, noted the DC Water placed a hold on the customer's account in February 2017 until the water meter was replaced and tested. Ms. Wright testified that the water meter was tested on March 28, 2017 and determined to be under-registering water usage at the property. She stated that the meter test found the meter accuracy to be 66.24%.

Mr. Bocaj asserted that he talked with April Bingham of DC Water's Customer Service Department in year 2017 about the bill being too high, but, at the time, he had no idea that the high usage was being caused by an underground water leak. Mr. Bocaj pointed out that an email was sent to DC Water on 2/6/2017 regarding the fact that the condominium was being billed based upon estimated usage and a demand was made for the bill to be based upon actual usage. Mr. Bocaj stated that he was told by DC Water that the water meter would be replaced in June 2017 based upon the utility's schedule pursuant to its meter replacement program which was ongoing.

Ms. Wright asserted that the customer was negligent in notifying DC Water of the underground leak. She reiterated that the customer knew of the existence of the leak in February, repaired the leak in March but notified the utility in April. Mr. Bocaj responded that it took time to have the repair performed and then put a request package together for presentation to the utility in support of its adjustment request. Mr. Bocaj asserted that the condominium did not take a long time to contact the utility after the repair was performed. Ms. Parker responded that the customer should have instituted a bill dispute each month (billing period) that it asserted that its bill was too high. Mr. Bocaj countered that the condominium always has disputed the validity of the estimated bills sent to it by DC Water. He explained that the condominium's Board took up the request for investigation of the problem in January which was its first meeting following the holidays over which meetings were suspended. He stated that Mr. Wilborn was brought in as an advisor in November 2017 and that, once Mr. Wilborn identified a problem, the issue was brought to the Board at its next meeting which was January 2018, that the Board authorized investigation, that a company was hired to fix the problem and then, he and Wilborn put the adjustment request together and submitted the same to DC Water in March 2018. Mr. Bocaj argued that it takes time for any problem to be responded to by a condominium because of the necessity to take issues to the Board. Mr. Bocaj asserted that he needed to put it all together in a presentation to DC Water in order to request an account adjustment. He pointed out that it took DC Water eleven (11) months to address the request for an account adjustment in an administrative hearing. He asserted that, contrary to the utility's delay, the customer, as soon as possible, got the information and submitted its request for an adjustment. Mr. Bocaj asserted that the condominium loss \$140,000.00 in revenue due to the leak and that such a loss is not insignificant and he does not feel that a \$28,000.00 adjustment is fair based upon the condominium's billing during the period that the leak was present.

Ms. Wright noted that DC Water received the customer's Petition for an Administrative Hearing on December 26, 2018 and that the administrative hearing was scheduled for March 26,

2019. Mr. Bocaj countered that the customer was notified of the adjustment on November 30, 2018 and to the adjustment amount, it did not agree, so it did not delay in requesting an administrative hearing.

Mr. Bocaj asserted that no one was analyzing usage by the condominium until Mr. Wilborn came in as an advisor in November. He stated that Mr. Wilborn established the customer's baseline water usage and saw that a problem existed unrelated to internal fixtures. Mr. Bocaj stated that prior to Mr. Wilborn's insertion into the on-going argument over the bills, the focus had been on estimated billing vs. actual read based billing. Mr. Bocaj stated that DC Water repeatedly sent disconnection notices to the customer.

Ms. Wright reemphasized that an underground leak was subject to the ten (10) day notice requirement.

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 sixty-six (66) units of a condominium community comprised of 243 townhouses; the community is billed through seven (7) accounts, only the balance of one of the accounts is in issue. (Testimony of the parties)
2. The period in dispute is October 26, 2016 to March 2, 2018. (Testimony of the parties)
3. The customer experienced a significant increase in its water usage beginning in December 2016 and its water usage remained elevated, although decreasing between March 2017 and November 2017. After the decline in usage, usage significantly elevated again in December 2017 and remained high until an underground leak was repaired in March 2018. (Testimony of Edward Bojac and David Wilborn)
4. The customer contacted DC Water in February 2016 regarding its water and sewer bill and requested a meter change, as well as, that the utility cease estimating its bill and bill based upon actual meter readings. (Testimony of Edward Bojac)
5. The customer paid, in full, DC Water's bill for water and sewer service but protested its receipt of the bills based upon estimated usage and the customer maintained its request for a new water meter. In response to its demand for a new water meter, DC Water informed the customer that it would receive a new water meter based upon its meter replacement program schedule which, in the customer's case, meant that the meter would be replaced in June 2017. (Testimony of Edward Bojac)
6. In addition to contacting DC Water regarding its billing, the customer wrote to its owners advising of the high-water usage registration and requesting owners to check their property for any plumbing issues and the customer checked the property for toilet leaks. (Testimony of Edward Bojac)
7. After DC Water changed the water meter, the customer experienced a decline in water usage, however, the decline was not back to historical levels and did not continue. Water usage declined in March 2017 to November 2017 but usage significantly increased in December 2017 and peaked in January 2018. (Testimony of Edward Bojac and David Wilborn; exhibit presented by the customer entitled "Actual Water Consumption vs.

Normal Consumption@ 210 G Street, SW"; DC Water Usage Information chart' color graph prepared by customer entitled "April 2016 – March 2018 Water Consumption at Capitol Park 210 G Street")

8. DC Water conducted a meter test of the water meter which had been at the property and the meter was determined to have 66.24% accuracy; the meter test was performed on March 28, 2017. (Testimony of Eileen Wright; DCWASA Meter Test Results)
9. David Wilborn was hired in November 2017 by CFM Management Services and he picked up on the fact that the customer's water and sewer service usage/bills appeared to be too high for such a complex and he thought that the problem was being caused by running toilets. (Testimony of Edward Bojac and David Wilborn)
10. When the customer received its bill from DC Water in November 2017 reflecting that water usage was again increasing and the customer's January 2018 bill was received reflecting the water usage was elevating upward, Mr. Wilborn conducted an analysis of the historical water usage of the customer and determined that the high-water usage was not the result of running toilets within individual townhomes but something else causing high water usage at the property. (Testimony of David Wilborn)
11. Based upon his analysis of the history water usage at the property, Mr. Wilborn suspected that the cause of the usage was an underground leak and he further determined that the water pipes were made of cast iron and as such, that the flow of water was being constricted thru the hole in the pipe when the weather was warm and increased when weather was cold, thus, accounting for the drop in usage during the warmer months of the year. (Testimony of Edward Bojac and David Wilborn)
12. Mr. Wilborn alerted the customer of his findings and the need to find the leak causing the high-water usage at the property and the matter was presented to the condominium's Board in January 2018, which was the first meeting of the Board which had been on hiatus during the holidays. (Testimony of Edward Bojac and David Wilborn)
13. The condominium Board approved expenditure for the hiring of a company to locate the leak and American Leak Detector conducted an investigation of the property finding an underground leak in the parking lot. (Testimony of Edward Bojac and David Wilborn)
14. Repair of the underground leak found under the pavement of the parking lot of the property was performed by First Class Plumbing, LLC between 2/15/2018 and 3/6/2018. (First Class Plumbing, LLC invoice dated 3/23/2018)
15. Following repair of the underground leak, water usage at the property resumed back to within historical use levels. (Testimony of Edward Bojac and David Wilborn)
16. The customer contacted DC Water on April 16, 2018 requesting an account adjustment based upon its finding and repair of an underground leak. (Testimony of the parties)
17. Based upon his analysis of the customer's water usage, Mr. Wilborn concluded that the underground leak began in December 2016 and, as such, the customer requested its account adjustment beginning in year 2016 until the repair was performed in March 2018. (Testimony of Edward Bojac and David Wilborn)
18. DC Water, upon receipt of the customer's request for an account adjustment based upon high water usage having been caused by an underground leak, concluded that the customer had failed to make a timely dispute its billings. (Testimony of Eileen Wright and Geneva Parker)
19. Despite its determination that the customer's dispute of its billings was untimely, DC Water decided to adjust the customer's billing for the period January 26, 2018 to March

- 23, 2018, which was the billing most close to the customer's contact of DC Water advising of the leak. (Testimony of Eileen Wright and Geneva Parker)
20. DC Water granted to the customer 100% adjustment for sewer charges amounting to \$20,935.00 and 50% of water usage amounting to \$7,762.16 for high-water usage between January 26, 2018 and March 23, 2018, amounting to a total account adjustment of \$28,597.67 as reflected on the customer's bill statement received March 2019. (Testimony of Eileen Wright and Edward Bojac)
21. The customer was notified by DC Water of the granting of the account adjustment in the amount of \$28,597.67, however, the customer asserts that it is unfair that it is being charged for and it has paid for water that went directly into the ground and it is requesting a sewer credit in the amount of \$139,766.00 (Testimony of Edward Bojac; Statement dated April 16, 2018 by CFM Management Services on behalf of the customer to DC Water)

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. An owner or occupant may challenge the most recent charges assessed by WASA for water, sewer and groundwater sewer service by either:
 - (a) Paying the bill, and notifying WASA in writing that he or she believes the bill is incorrect and is paying under protest; or
 - (b) Not paying the current charges contained in the bill and notifying WASA in writing, within ten (10) working days after receipt of the bill of the reason(s) why the bill is believed to be incorrect. (21 DCMR 402.1)
3. The repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunction water-cooled air conditioning equipment, are the responsibility of the owner or occupant. (21 DCMR 406.1)
4. If the investigation discloses leaking faucets, leaking fixtures, or similar leaks, no adjustment will be made to the bill for any portion of the excessive consumption attributable to those leaks. (21 DCMR 406.2)
5. If an underground leak or a leak not apparent from visual or other inspection 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 if requested, the utility may adjust the bill(s) for the periods during which the leak occurred by an amount not to exceed 50% of the excess water usage over the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. The General Manager may take the following into consideration in determining whether there should be a reduction in the bill(s):
 - (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 and approved by the Chief,

- Plumbing Inspection Branch, Department of Consumer and Regulatory Affairs, or his or his designee in accordance with D.C. Code §8-205;
- (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 repairs; and
 - (e) The request for adjustment has been made promptly.

The General Manager may, at his discretion, adjust up to 100% of the excess sewer chargers resulting from an underground leak if it is determined that the excess water usage did not enter the wastewater system.
(See, 21 DCMR 407.3 and 407.5)

DECISION

This matter came before the Hearing Officer upon the customer's Petition for review of DC Water's decision to grant an adjustment on the account arising from the discovery and repair by the customer of an underground leak on its property. The customer sought an account adjustment for the period 10/26/16 to 3/6/18. DC Water determined that the customer's request for an account adjustment was untimely and refused to consider for adjustment the entire period requested by the customer. The utility, however, granted the customer an account adjustment in the amount of \$28,597.67 which reflected 100% adjustment for sewer charges amounting to \$20,935.00 and 50% of water usage amounting to \$7,762.16 for high-water usage between January 26, 2018 and March 23, 2018. The granted account adjustment is reflected on the customer's bill statement received March 2019. The customer seeks further account adjustment in the amount of \$139,766.00 asserting that, because water usage was the result of an underground leak, it should not be charged for sewer service. The customer asserted that the sewer credit sought is reflective of the amount of water that was not returned for treatment as it was lost underground.

The first issue to address is whether the customer could request an account adjustment for bills dating back before January 26, 2018 which was the beginning of the billing cycle most close to the customer's contact with DC Water to request an account adjustment. DC Water argued that the customer had ten (10) working days to challenge a bill and should have disputed its high-water bill each billing cycle. DC Water determined that it would only adjust the customer's bill for the billing cycle most close to the customer's contact with DC Water to request an account adjustment. The utility adjusted the period January 26, 2018 to March 23, 2018. The customer requested the account adjustment in April 2018.

21 DCMR §402.1 dictates a customer has ten (10) working days after receipt of the bill in which to challenge a bill that the customer believes to be incorrect and does not pay the bill, or, the customer may pay the bill and note that the payment is made under protest, provided the customer does so before receipt of the next bill because a challenge pertains to the most recent charges.

Like 21 DCMR §412 which sets fifteen (15) calendar days of the date after receipt of the utility's investigative report on a dispute as the deadline for requesting an administrative hearing, 21 DCMR §402.1 is an administrative rule deadline, also known as, a claim processing rule and is

subject to waiver. Such rules do not serve to bar relief and can be waived by the utility. The fact that this matter was scheduled for hearing and the customer was granted an account adjustment despite having failed to dispute the bill within the timeframe set by regulation constitutes a waiver of the regulation by DC Water. (See, Gatewood v. DCWASA, 82 A.3d 41, DC Court of Appeals, 2013) Having waived its claim processing rule, it was error for the utility to limit its consideration of the adjustment request to the billing period most close to the customer's request for the account adjustment. The utility's act of considering only one billing period when the customer's request spanned several periods is arbitrary and unreasonable. Either the utility is applying the claim processing rule to a customer's request or it is waiving the rule...

Notwithstanding the finding that DC Water waived the dispute deadline imposed by 21 DCMR§402.1, the Hearing Officer does not consider 21 DCMR§402.1 the controlling regulation or even applicable to this matter. The customer asserted that it was not disputing the accuracy of its bills and the Hearing Officer agrees with the customer's position. The customer is seeking an account adjustment because of the finding and repair by it of an underground leak. DC Water did not challenge that customer's assertion that it found and repaired an underground leak. Title 21 §407 of DCMR set forth provisions and considerations necessary to be made by DC Water when determining whether there should be a reduction in the bill(s) due to an underground leak. 21 DCMR 407 sets no deadline in terms of a specific amount of days for when a customer must make request for an account adjustment and the regulation refers to "bill(s)" as oppose to the most recent bill as 21 DCMR§402.1 does when it imposes a time limit for dispute of a bill. 21 DCMR 407 sets forth that the General Manager of DC Water may consider: (1) if there was negligence on the part of the owner in notifying DC Water of conditions indicative of a waste of water; (2) if the owner has taken steps to have the leak repaired promptly upon discovery; (3) if the repairs were performed by a District registered plumber; (4) if a form was obtained from DC Water and signed by the owner and certified by the plumber who made the repairs; and, (4) if the request for adjustment was promptly made.

Based upon the evidence and testimony, it appears that DC Water failed to take into consideration the factors set by 21 DCMR 407 when it decided not to extend an account adjustment to the customer for any bills received before January 26, 2018. By failing to apply the considerations set by 21 DCMR 407 to the customer's request for an account adjustment, DC Water was wrong.

The Hearing Officer, however, disagrees with the customer's position that an account adjustment should extend back to October 28, 2016. As discussed above, the time limit set by 21 DCMR 402.1 is not controlling regarding a request for an account adjustment due to an underground leak. It appears that based upon the considerations of 21 DCMR 407, it is relevant to consider and the utility should have considered if the customer was negligent in notifying DC Water of conditions indicative of a waste of water and if the customer promptly requested the adjustment after the repair had been performed. No issue was raised during the hearing or in any documents pertaining to this matter as to the existence of the underground leak, that the underground leak caused water waste, whether the customer promptly took steps to have the leak repaired upon discovery, that the repair was performed by a registered District plumber, or that the customer was barred from relief due to having failed to obtain and execute the form cited in 21 DCMR 407.

Through testimony and evidence, it was established that the customer contacted DC Water about billing as early as February 13, 2017, however, at that time, the customer was calling the utility to complain regarding estimated billing and the customer wanted DC Water to change its water meter. While one might infer that the customer was complaining due to high water bills caused by the underground leak, the testimony and evidence was to the contrary and established that, in year 2017, the customer believed that the high-water usage occurring at the property was due to running toilets and the customer made no effort to investigate any other possible cause of the increased water usage at the property to include the possibility of an underground leak causing increased water usage. Mr. Bojac, further, testified that after the water meter was changed at the property, usage started to decline and it was rationalized that even though the registering usage was higher than historical level, the high usage was because of the summer season. Both representatives of the customer testified that it was not until Mr. Wilborn was hired and he undertook an analysis of the customer's billing history that anyone considered that the cause of the high bills might be something other than internal fixtures in individual townhomes. Mr. Wilborn became involved with the customer, as its advisor, in November 2017 and testified that when the customer's water usage started increasing and peaked in January 2018, he realized that the cause of the high usage was not due to running toilets and there was a need to investigate the existence of a possible underground leak. The customer's representatives explained that process required of presenting the issue to the Condo Board for authorization and they explained the steps and actions taken thereafter to find and repair the underground leak and present a request to DC Water for account adjustment.

Based upon the testimony and evidence adduced during the hearing, the Hearing Officer is convinced that the customer became suspicious, as the weather became colder in year 2017 and its usage began to increase again, that something other than running toilets was causing high water usage to occur at the property. Pursuant to the regulations, the customer had an obligation to advise DC Water of unusual conditions indicative of a waste of water (21 DCMR 407.5(a)) and the customer only became suspicious that an unusual condition might exist in the Fall of 2017 and, as such, the customer was negligent in failing to advise the utility as early as when it became aware that something was causing water waste. The customer presented a graph of water usage at the property which reflected a peak in January 2017 and then a decline which continued through August 2017. The graph reflected that the customer's water usage started to increase in September 2017 and hit a high in January 2018. Had the customer contacted DC Water when usage again began to rise and it was suspected that toilets were not the culprit, DC Water would have conducted an investigation to determine the cause of the wasted water and if an underground leak is found, whether the leak was on public or private property. DC Water would have repaired the underground leak if the leak were determined to have been on public property or it would have informed the customer that it had to repair the leak if the leak was determined to be on the customer's property. In this case, the customer undertook its own investigation but did so only after Mr. Wilborn's analysis of water usage at the property. Ultimately, the underground leak was found to be in the parking lot of the property and, thus, under the control of the customer which, in turned was responsible for its repair. (See, 21 DCMR 407.3 and 407.5) The Hearing Officer finds to harm or fault in that the customer, in this case, conducted its own investigation as opposed to notifying DC Water of its suspicions since, ultimately, the underground leak was found on the customer's property. Mr. Wilborn is given credit for his

testimony that it was a “learning process” to determine that it was an underground leak and not running toilets causing the increased usage, but the Hearing Officer believes that the learning process did not start until the customer’s water usage started to increase after August 2017 and the customer did not take action until it brought Mr. Wilborn on as its advisor and he investigated, analyzed and recommended action. No fault is attributed to the customer in its notifying DC Water of the underground leak as the same existed from the hire of Mr. Wilborn going forward up to the repair of the leak. The customer’s error in believing that the high-water usage was due to running toilets and, later, that the usage was corrected after change of the water meter, however, effectively stops any relief being granted to the customer based upon the existence of the underground leak prior to Mr. Wilborn’s introduction into problem solving of the cause of the usage. In other words, the customer did not suspect the existence of an underground leak as the cause of a waste of water and as such, it did not notify the utility of its suspicions of any “unusual condition” and it took no action to investigate a cause of the usage beyond looking for leaking toilets and internal fixture within the individual condominiums. The customer contacted its residents to check their toilets and plumbing and the customer checked for running toilets and then believed that problem was resolved. Running toilets do not constitute basis for an account adjustment. (See 21 DCMR 406.1 and 406.2) And until the customer suspected that its high usage was due to something constituting basis for relief and it took positive action to address the issue, the period of consideration for an account adjustment does not start.

DC Water adjusted the customer’s account for the period starting January 26, 2018, however, based upon the testimony and evidence, the Hearing Officer is persuaded that an adjustment was warranted as of November 2017 which corresponds with the hire of Mr. Wilborn who ultimately unearthed that an underground leak was causing the increased water usage at the property. DC Water determined that a 50% adjustment of water and 100% adjustment of sewer was appropriate for the period January 26, 2018 to March 23, 2018. The Hearing Officer hereby directs that the same percentages of adjustment be granted to the customer for the periods November 30, 2017 to December 28, 2017 and December 28, 2017 to January 26, 2017, as well as, a pro-rated adjustment for the period October 2017 – November 30, 2017 billing cycle with the adjustment starting November 1, 2017. (Specific dates of the October 2017 – November 30, 2017 billing cycle of the customer were not submitted to the Hearing Officer, and, as such, DC Water must ascertain from its records the customer’s billing period and calculate the adjustment appropriately starting November 1, 2017.) In other words, the account adjustment is to start as of November 1, 2017.

Based upon the foregoing, it is determined that DC Water inappropriately limited the account adjustment to which the customer was entitled and the customer is entitled to further adjustment of its account as outlined above.

SO ORDERED.

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

Date: May 14, 2019

Capitol Park IV Condo

c/o:

Mr. Edward Bocaj

CFM Management Services

5250 Cherokee Avenue #100

Alexandria, VA 22312

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

IN RE: [REDACTED]
[REDACTED] Southern Avenue, SE
Washington, DC 20032

Account No: [REDACTED]
Case No: 20190225

Amounts and Periods in Dispute:
8/28/18 – 9/28/18 = \$462.44
9/29/18 – 10/26/18 = \$553.12

Before Janet W. Blassingame, Hearing Officer
March 26, 2019 at 11:00 a.m.
(Start delayed to 12:15 p.m. due to prior hearing run-over)

ORDER OF DISMISSAL

The customer contested water and sewer bills for the above account for the periods of time August 28, 2018 to September 28, 2018 and September 29, 2018 to October 26, 2018. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and no adjustment of the account was warranted. The utility further noted that the account had been billed based upon actual meter readings. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on March 26, 2019. Present for hearing were [REDACTED] and her daughter, [REDACTED]; Eileen Wright, Communication Specialist, DC Water, on behalf of DC Water; Geneva Parker, Manager, DC Water Customer Services and Arlene Andrews, Communication Agent, DC Water, as observers.

At the start of the hearing, Ms. Wright stated that DC Water has reversed its initial determination that an adjustment was not warranted and the utility has now determined that an adjustment in the amount of \$702.05 is warranted. Ms. Wright explained that DC Water conducted a test of the water meter- number 83120277, and, the water meter was determined to be over registering water consumption at the property. Ms. Wright indicated that the audit was conducted on November 20, 2018. Ms. Wright stated that a new water meter was placed at the property in October 2018 and a second water meter was installed at the property in February 2019.

Ms. Wright indicated that the adjustment pertains to the period September 6, 2018 to October 26, 2018.

Ms. Wright stated that the customer's current balance owed on the account is \$2,322.16 and that with the adjustment of \$702.05, the customer will owe DC Water \$1,620.11. Ms. Wright indicated that the customer can contact DC Water to arrange a payment plan and that the plan can be based upon twelve (12) months of payments.

Based upon the representation made by Eileen Wright and [REDACTED]'s acceptance of

the adjustment as describe, this matter appears to be moot, and, as such, the same is hereby DISMISSED as settled and resolved.

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

Date: May 14, 2019

Copy to:

Ms. [REDACTED]
[REDACTED] Southern Avenue, SE
Washington, DC 20032

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

IN RE: [REDACTED]
[REDACTED] Charleston Terrace, NW
Washington, DC 20007

Account No: [REDACTED]
Case No: 20190224

Amount in Dispute: \$1,004.22

Before Janet W. Blassingame, Hearing Officer
March 26, 2019 at 1:00 p.m.

The customer contested a water and sewer bill for the above account for the period of time November 14, 2018 to December 12, 2018. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and no adjustment of the account was warranted. The utility further noted that the account had been billed based upon actual meter readings. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on March 26, 2019. Present for hearing were [REDACTED]; Eileen Wright, Communication Specialist, DC Water, on behalf of DC Water; and Kimberly Arrington, Supervisor, Customer Support, DC Water, observing.

The property involved is a single-family residence rented by Mr. [REDACTED] since May 2018. The house has five and one-half (5 ½) bathrooms, one kitchen, a kitchenette, two (2) washing machines, two (2) dishwashers, an irrigation system, and two (2) or three (3) outside faucets.

Mr. [REDACTED] stated that he and his family came to the United States from Dubai in the United Arab Emirate in May 2018 and that the family had previously lived in London, Singapore and Hong Kong. Mr. [REDACTED] explained that his water and sewer bill has been high (\$400.00) since his occupancy of the residence but that because he came from Dubai where water is very expensive, he was not aware that his service charge was not normal. Mr. [REDACTED] stated that when his service charge reached \$1,000.00 for one billing cycle, he realized that something was wrong. He testified that he looked for leaks but found no leaks within in house. Mr. [REDACTED] stated that he turned off the water line to the garden and he, also, spoke with his neighbors and his brother, who also lives close-by, regarding their water bills. Mr. [REDACTED] stated that, on December 19, 2018, he called DC Water regarding the water bill and the utility sent a service technician to conduct an internal audit of the property. The customer stated that the service technician performed dye testing but found no leaks.

Mr. [REDACTED] testified that he noticed on the DC Water website, upon review of his usage, that water usage at his house declined the next day after his contact with DC Water. Mr. [REDACTED] testified that the only change at the residence was that he turned off the water line to the garden. Mr. [REDACTED] stated that he believes that there is a leak in the irrigation system. He explained that the irrigation system was programed to run five (5) minutes in the morning and the water bill

doubled. Mr. [REDACTED] stated that he can see the impact of the irrigation system running since he turned off the irrigation system. He asserted that he feels responsible for payment of the water usage but he feels that he should not have to pay other charges such as sewer. He stated that his charges for water and sewer service has accumulated to \$4,321.00 since June 2018 and that he realizes that \$120.00 should have been the normal charge to him for water and sewer service.

Mr. [REDACTED] acknowledged that he does not have a sub-meter for registration of water used by the irrigation system.

Ms. Wright testified that DC Water considers the charges to be valid based upon meter readings from the property. She testified that high water usage occurred at the property between November 14, 2018 and December 18, 2018 and that over the course of thirty-four (34) days, the customer used 94.06 CCF of water which was equivalent to 2.790 CCF of daily usage.

Ms. Wright testified that DC Water's service technician inspected the property on January 2, 2019 and no leaks were found. Mr. [REDACTED] interjected that he turned off the water valve for the irrigation system on December 18, 2018. Ms. Wright stated that between December 18, 2018 and January 9, 2019, the customer's average daily water usage was 0.169 CCF.

Ms. Wright testified that DC Water removed the water meter for testing on February 22, 2019 and tested the water meter on March 21, 2019. She stated that the water meter was determined to have 101.09% accuracy. Ms. Wright explained that according to standards established by the American Water Works Association, accepted range of accuracy for a water meter is between 98.5% and 101.5%.

Ms. Wright asserted that for DC Water to consider an account adjustment due to high water loss from an irrigation leak, the customer must first have the leak repaired. She cited 21 DCMR §407.4 as the controlling regulation. Ms. Wright stated that because the leak has not been repaired, only the valve shut off, there is no cause to adjust the customer's account.

Ms. Wright suggested that the customer install a sub-meter at the property so that he can receive credit on his sewer charge. She, also, suggested that the customer sign up for HUNA (High Usage Notice Alert system).

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

FINDINGS OF FACT

1. The property involved is a single-family residence occupied by [REDACTED] and his family. (Testimony of [REDACTED])
2. The period in dispute is 11/14/2018 to 12/12/2018. (Testimony of the parties)
3. There was a significant increase in registering water usage at the property between 11/14/2018 and 12/18/2018. (Testimony of Eileen Wright)
4. Upon receipt of his bill for water and sewer service, the customer contacted DC Water

- to dispute the charge and he, also, checked his house for leaks and he turned off the valve supplying water to his irrigation system. (Testimony of [REDACTED])
5. DC Water sent a service technician to conduct an internal audit of the property on January 2, 2019 and no leaks were found. (Testimony of the parties)
 6. The day after contacting DC Water regarding his bill statement, the customer saw of the DC Water website that his water usage had declined. (Testimony of [REDACTED])
 7. The customer asserted that the only thing that occurred at the property that might have effect upon his water usage, was his turning off the water to the irrigation system. (Testimony of [REDACTED])
 8. DC Water removed and tested the water meter and the meter was determined to have 101.09% accuracy. (Testimony of Eileen Wright)
 9. There is no sub-meter installed at the property to register water used by the irrigation system. (Testimony of [REDACTED])
 10. The customer suspects that there is a leak in the irrigation system, however, he has only turned off the water to the system and not performed any repairs to the irrigation system. (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. If the investigation discloses leaking faucets, leaking fixtures, or similar leaks, no adjustment will be made to the bill for any portion of the excessive consumption attributable to those leaks. (21 DCMR 406.2)
3. If an underground leak or a leak not apparent from visual or other inspection 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 if requested, the utility may adjust the bill(s) for the periods during which the leak occurred by an amount not to exceed 50% of the excess water usage over the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. The General Manager may take the following into consideration in determining whether there should be a reduction in the bill(s):
 - (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 and approved by the Chief, Plumbing Inspection Branch, Department of Consumer and Regulatory Affairs, or his or his designee in accordance with D.C. Code §8-205;
 - (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 repairs; and
 - (e) The request for adjustment has been made promptly.

The General Manager may, at his discretion, adjust up to 100% of the excess sewer chargers resulting from an underground leak if it is determined that the excess water

usage did not enter the wastewater system.
(See, 21 DCMR 407.3 and 407.5)

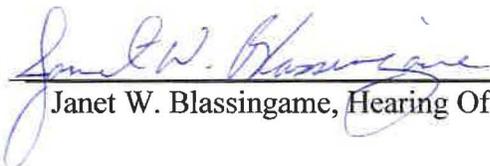
4. If, pursuant to §407.3 the leak is determined to have been caused by the Authority, or is determined to be in public space, the Authority shall repair the leak and the General Manager shall adjust the bill to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. If the leak is determined to have been caused by the owner or occupant, no adjustment shall be made. (21 DCMR 407.4)

DECISION

The customer in this case was unable to show that more likely than not the bill in dispute was wrong. To the contrary, the customer believed that the high-water usage causing the bill was due to a leak in an irrigation system at the property. The customer testified that he turned off the valve to the irrigation system and noticed on the utility's website, the very next day, that water usage at the property declined. DC Water presented evidence that the bill was based upon meter readings from the property and that the water meter was functioning within accepted range for meter accuracy. The customer requested relief from the charge for sewer service based upon any lost water having not gone into the sewer system but loss into the ground. The customer did not have evidence of any repair of the irrigation system and his testimony was limited to his act of turning the water off to the irrigation system and the resulting effect of his action. The customer further acknowledged that there was no sub-meter registering water used by the irrigation system.

When an underground leak is found on private property, a customer may be entitled to an adjustment of his water and sewer account for the excessive water lost due to the leak. In order to be considered for an account adjustment, the customer must meet certain criteria set forth in the regulations. Such criteria include but are not limited to the customer having the underground leak repaired by a certified District of Columbia licensed plumber. (See 21 DCMR 407.5) Here, the customer testified as to a strong reason why he suspects that the high-water usage was caused by his irrigation system but he did not testify or have any evidence that the leak had been repaired. Without proof of repair of the leak and meeting the other criteria set forth by regulation, the customer does not and can not qualify for consideration of an account adjustment based upon an underground leak causing water loss. Further, without the use of a sub-meter, the utility lacks information as to what amount of water went thru the irrigation system and would be applicable to adjustment for sewer charge, so even if the customer had had evidence of an underground leak and its repair, DC Water might have been unable to determine the relief from sewer charge as requested by the customer.

The DC Water determined that no basis exists for adjustment of the customer's account and the Hearing Officer, based upon the testimony and evidence presented, agrees. Accordingly, the determination of DC Water that no basis exists for adjustment of the customer's account is hereby AFFIRMED.

By: 
Janet W. Blessingame, Hearing Officer

Date: May 14, 2019

Copy to:

Mr. [REDACTED]
[REDACTED] Charleston Terrace NW
Washington, DC 20007

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

IN RE: CB Thornton Realty, LLC
1607 Shady Glen
District Heights, MD 20747

Account No: [REDACTED]
Case No: 201901028

Service Address: 138 35th Street, NE

Amount in Dispute: \$1,898.67

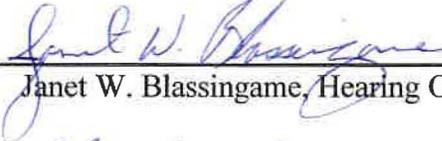
Before Janet W. Blassingame, Hearing Officer
March 26, 2019 at 2:00 p.m.

MEMORANDUM TO FILE

This matter was scheduled for hearing on March 26, 2019. Charles Thornton appeared on behalf of CB Thornton Realty, LLC, his company, and, Eileen Wright was present on behalf of DC Water. Immediately upon seeing Mr. Thornton, Ms. Wright realized that she knew him and that there was a potential conflict in her representation of the DC Water if this matter went forward for hearing. Ms. Wright advised the Hearing Officer that DC Water had reversed its position and that an account adjustment had been made on the customer's account on March 20, 2019. Ms. Wright stated that she would advise Mr. Thornton of the adjustment and see if he was satisfied with the adjustment. Ms. Wright indicated that for the period 5/10/18 to 7/19/18 upon the charge of \$1,898.67, DC Water had given the customer a credit of \$444.62.

Ms. Wright spoke with Mr. Thornton who accepted the adjustment as settlement of his dispute.

Mr. Thornton left the hearing and no hearing was convened.

By: 
Janet W. Blassingame, Hearing Officer

Date: May 14, 2019

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

IN RE: [REDACTED]
[REDACTED] 18th Street, NE
Washington, DC 20002

Account No: [REDACTED]
Case No: 20181161

Amount in Dispute - \$ 731.68

Before Janet W. Blassingame, Hearing Officer
March 27, 2019 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time January 9, 2018 to February 5, 2018. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and no adjustment of the account was warranted. The utility further noted that the account had been billed based upon actual meter readings. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on March 27, 2019. Present for hearing were [REDACTED] and Eileen Wright, Communication Specialist, DC Water, on behalf of DC Water. [REDACTED] joined the hearing in progress.

The property involved is a four (4) unit apartment building owned and occupied by [REDACTED] with her husband, [REDACTED]. Each unit has a kitchen and a bathroom. The building has one outside faucet and is monitored by a single water meter. Ms. [REDACTED] stated that the water and sewer bill for the building, historically, ranges between \$175.00 to \$210.00 per billing cycle. She stated that only three (3) units in the building are occupied and that there is a total of five (5) people living in the building. She stated that one unit was being renovated as of May 2017 and that her husband shut-off the water to that unit by going through the crawl space below the building.

Ms. [REDACTED] testified that she observed no plumbing problems in the building and none of the tenants expressed to her that they were experiencing any leaks or plumbing issues within their units. She stated that, when she received the bill in dispute, she thought that the charge was incorrect and she contacted DC Water. She stated that she was told by DC Water to hire a plumber or to have a service technician inspect the building for leaks. Ms. [REDACTED] stated that she opted for DC Water to send a service technician to conduct an audit.

Ms. [REDACTED] stated that, when the audit was performed at the building, the service technician found no leaks. She stated that, when the service technician was at the building, the service technician relied upon her husband to put dye in the toilet and to tell the technician the results of the tests. She also stated that, as part of the audit, her husband turned off the water to all of the units in the building but the water meter continued to run. She stated that the service

technician came back and replaced the water meter. The customer testified that, after a new water meter was placed at the property, the bills for service returned to normal and there were no further issues regarding water usage.

Ms. [REDACTED] asserted that, in follow-up to the audit, DC Water told her that no leaks were found and that she was responsible for payment of the bill.

Ms. Wright testified that DC Water believes that the charges are valid based upon meter reads from the property. She testified that a spike in water usage occurred between January 2018 and April 2018. Ms. Wright explained that the customer had an AMR water meter at the property, however, during the period in dispute, the meter read transmission unit (MTU) was not working and was not transmitting meter reads from the property. Ms. Wright stated that DC Water would send a service technician to the property to obtain a meter reading or the utility would opt to estimate water usage at the property. She stated that on January 8, 2018, DC Water estimated the customer's water usage and billed based upon the estimate.

Ms. Wright testified that DC Water installed a new water meter at the property on April 5, 2018.

Ms. Wright testified that DC Water conducted an underground leak test at the property on April 12, 2018 but she disputed the customer's testimony that the utility sent a service technician to conduct an audit of the property. Ms. Wright testified that the utility did not conduct an internal audit of the property for leaks and that the customer did dye tests within the building. Ms. Wright presented into evidence the underground inspection work order and the technician's comments were: "found registration at water meter outside commercial 4 unit bldg. found out customer was using water property inside service valve is working properly and dye test was performed at all toilets found no leaks at commercial property at this time. found new 1" water meter was installed and bldg. owner stated water bill was high before new water meter was installed."

Ms. Wright testified that the customer was scheduled to receive a new water meter in April 2018 and, normally, the utility is unable to test a meter when it is replaced during the normal course of business, however, in this instance, because the customer had disputed the bill charge before the meter was replaced, the utility was able to test the meter. Ms. Wright testified that based upon testing of the water meter, the meter was determined to have 99.5% accuracy.

Ms. Wright testified that, reviewing meter reads from the property, there were instances when the water meter would run then stop, but, on April 14, 2018, the stops became more extended and usage slowed significantly.

Ms. Wright asserted that she does not know what occurred at the property to cause increased water usage, however, she knows that the increased usage was not caused by an underground leak because the usage stopped. She stated that the usage declined immediately upon installation of the new water meter.

Mr. [REDACTED] interjected that the service technician told him that they would recommend that he [the customer] not have to pay the bill.

Ms. Wright stated that because she lacks daily meter reads from the property, she cannot pinpoint when the decline in usage started. She pointed out that between 12/6/2017 and 2/5/2018, the customer's daily water usage was 1.245 CCF and between 2/5/2018 and 4/5/2018, the customer's daily water usage was .953 CCF.

Ms. [REDACTED] excused herself from the hearing in order to get to an interview; Mr. [REDACTED] continued in the hearing.

Mr. [REDACTED] reiterated that the service technician told him something was happening with the water meter and he would recommend that they not have to pay the bill.

Ms. Wright asserted that, by the time that the service technician was at the property for the underground inspection, the water meter had been replaced. Ms. Wright stated that the service technician was looking at the new water meter. She, further, pointed out that the water usage at the building declined prior to the underground test and that whatever had caused the high-water usage had resolved before DC Water's service technician was at the property. Ms. Wright pointed out that the water meter change was done on April 5th and the underground test was performed on April 12th.

Mr. [REDACTED] asserted that the service technician's comments on the service order are not clear.

Ms. Wright asserted that she stands by what the service technician wrote on the service order. She stated that, maybe, because she has worked for DC Water for eighteen (18) years, what the service technician meant is clear to her. Ms. Wright stated that the customer thinks from the comments that the meter was still moving, however, she interprets the service technician to mean that someone was using water in the property when the service technician looked at the water meter. Ms. Wright, further, pointed out that the service technician did not write/note that an underground leak was detected. She emphasized that the conversation between the customer and the service technician pertained to the new water meter.

At this point, the hearing was adjourned but, then, Mr. [REDACTED] came back into the hearing room stating that he had an additional question. The Hearing Officer went back on record.

Ms. Wright clarified for the customer that because she lacks daily transmitted reads from the water meter, she cannot tell when the decline in water usage started. Mr. [REDACTED] contended that there may have been other reasons for the decline in water usage between February 5th and April 5th. Ms. Wright stated that the numbers suggest that the usage decline occurred prior to the meter change out.

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 four (4) unit apartment building owned and occupied by [REDACTED] and her husband, [REDACTED]. (Testimony of [REDACTED])
2. The period in dispute is January 9, 2018 to February 5, 2018. (Testimony of the parties)
3. A significant increase in water usage was occurring at the property between January 2018 and April 2018, however, the highest usage occurred between December 6, 2017 and February 5, 2018. (Testimony of Eileen Wright)
4. Water usage at the property declined between February 5, 2018 and April 5, 2018 to .953 CCF per day and, further, declined between April 6, 2018 and April 14, 2018 to .432 CCF per day, from 1.245 CCF per day between December 6, 2017 and February 5, 2018. (Testimony of Eileen Wright; DC Water meter read records)
5. DC Water lacks daily meter reads from the property during the period in dispute because the MTU was not transmitting. (Testimony of Eileen Wright)
6. DC Water is unable to pinpoint exactly when the decline in water usage started due to the lack of daily meter reads from the property; after the meter was changed on April 5, 2018, the utility began receiving hourly meter reads from the property. (Testimony of Eileen Wright; DC Water meter read log)
7. DC Water estimated the customer's water usage for billing for the period December 7, 2017 to January 8, 2018. The utility sent a technician to the property to obtain a meter reading for billing for the period January 9, 2018 to February 5, 2018. Between February 6, 2018 and March 2, 2018, DC Water estimated zero usage at the property and, then, obtained a meter read by a service technician on April 5, 2018 at the time of changing the water meter at the property. (DC Water meter read log; testimony of Eileen Wright)
8. DC Water changed the water meter at the property on April 5, 2018. (Testimony of Eileen Wright)
9. The customer was unaware of any plumbing issues at the property during the period of high-water consumption. (Testimony of [REDACTED])
10. None of the tenants informed the customer of any plumbing issues within their respective units during the period in dispute. (Testimony of [REDACTED])
11. Mr. [REDACTED] conducted dye tests on the toilets within in the building and detected no leaks. (Testimony of [REDACTED])
12. Per a meter test conducted by DC Water, the water meter from the property was determined to have 99.53% accuracy which is within the accepted range of water meter accuracy as set by the American Water Works Association. (Testimony of Eileen Wright; judicial notice that the accepted range of water meter accuracy is 98.5% to 101.5% as set by the American Water Works Association)
13. DC Water conducted a test for underground leaks at the property and the service technician did not note that any underground leak was detected. (Testimony of Eileen Wright; DC Water Service Order dated August 12, 2018)
14. At the time of the underground leak testing, the service technician at the property noted that a new water meter was at the property and that water was being used properly and no leaks were found. (DC Water Service Order notes dated April 12, 2018)

15. DC Water was able to conclude the existence of an underground leak as a possible cause of increased water consumption at the property because of the nature of underground leaks and that such leak require repair in order for the leak to stop and usage at the property periodically stopped without necessity of repairs being performed. (Testimony of Eileen Wright)

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. Meters shall be read quarterly or at such other times as the General Manager shall determine. (21 DCMR 308.1)
3. 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 personal of the Authority, the water charge for the interval in which the incident occurred shall be based on the average previous water consumption determined by meter readings. (21 DCMR 308.4)
4. 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
5. 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 failed to establish that more likely than not the bill in dispute was wrong or for some other reason, the customer should not be responsible for payment of the water and sewer charges.

The customer based her dispute of the charges upon assertions that the service technician who inspected the property for an underground leak told her husband that it would be recommended that the customer not have to pay the bill. The customer testified that, based upon her own knowledge, and the fact that her tenants did not inform her of any plumbing problems, there were no leaks or plumbing problems at her building during the time that increased water usage occurred. The customer asserted that something was wrong with the water meter at the property and increased water usage was resolved when the utility installed a new water meter at the property.

DC Water presented evidence and testimony of the service technician's comments following inspection of the property for an underground leak and the comments did not mention or support the customer's assertion that the service technician would recommend that the customer not be responsible for payment of the disputed bill for service. DC Water presented meter reads taken at the property establishing what the rate of usage was during various periods of time. The utility was able to calculate daily usage occurring at the property to show water usage declining prior to change of the water meter. DC Water tested the water meter which was at the property at the time of the period in dispute and presented the meter test results which reflected that the meter was functioning within accepted range of accuracy. The utility was able to exclude the existence of an underground leak as a possible cause of increase water usage occurring at the property. Lastly, DC Water distinguished the water meter at the property during the period in dispute from the water meter at the property at the time of inspection by the service technician, noting that the water meter was changed on April 5, 2018 and the inspection took place on April 12, 2018.

No dispute exists that the customer suffered increased water usage or loss, but, neither the customer nor the utility could determine the cause. DC Water properly conducted tests, based upon the customer's dispute of the charges, in an effort to determine the cause but its tests found that the meter was functioning properly and that the increased usage was not the result of an underground leak. Likewise, the customer was oblivious to what caused the increased usage and testified that she was unaware of any problems and her tenants did not inform her of any plumbing issues within their respective units. Moreover, DC Water's evidence showed that the utility either estimated the customer's water usage or obtained a meter read by sending a technician to read the water meter at the property and that, at no point, did the utility estimate the water usage at the property for an extended period of time which could have resulted in a violation of its duty to read the water meter on a regular schedule and within reasonable time lengths. Even though DC Water lacks sufficient data to pinpoint exact dates of increased usage and decline in usage, it presented sufficient evidence of meter reads to establish that the customer had opportunity to mitigate loss by having notice that increased water usage was occurring at the property. The regulations establish that DC Water should read water meters on a quarterly basis (See 21 DCMR 308.1) and, in this case, the utility only estimated usage for no more than one billing period at a time before it obtained an actual meter read, even though the MTU was not transmitting. As such, when increased usage started, the customer received a bill at the end of the billing period and was not disadvantaged due to lack of information as to what was happening at the property in terms of water consumption.

In instances such as in this case, where all checks and tests fail to find the cause of increased water usage, the regulations bar DC Water from adjusting a customer's account for increased water usage. (See, 21 DCMR 408) As such, based upon the evidence and testimony presented, the Hearing Officer can find no reason why the customer is not responsible for payment of charges which she disputed. Accordingly, the determination by DC Water 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: May 14, 2019

Copy to:

Ms. [REDACTED]
[REDACTED] 18th Street, NE, Apt. #2
Washington, DC 20002

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

IN RE: Voight Building LLC
c/o Ralph C. Voight, Jr.
701 Morningside Drive
San Antonio, TX 78209

Service Address:
5207 Wisconsin Avenue, NW

Account No: [REDACTED]
Case No: 201910119

Amounts and Periods in Dispute:
9/11/18 – 10/5/18 = \$1,017.05
10/6/18 – 1/6/18 = \$2,319.59
11/7/18 – 12/7/18 = \$2,204.77
12/8/18 – 1/8/19 = \$1,762.98

Before Janet W. Blassingame, Hearing Officer
March 27, 2019 at 1:00 p.m. (started 12:50 p.m.)

The customer contested water and sewer bills for the above account for the above noted periods of time which spanned from September 11, 2018 to January 8, 2019. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and an adjustment to the account was not warranted. DC Water noted that the customer had been billed based on actual meter readings. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on March 27, 2019. Present for hearing were Ralph Voight, Jr. and Eileen Wright, Communication Specialist, DC Water, on behalf of DC Water

The property involved is a commercial building built in year 1955 by the grandparents of Ralph Voight, Jr. The building is occupied by four (4) tenants. On the ground floor, identified by address 5205 Wisconsin Avenue, NW, is a liquor store, then, the remaining portions of the building are identified by the property address of 5207 Wisconsin Avenue, NW, and are occupied by three (3) tenants. The building is monitored by two (2) water meters with each respective meter identified by the property address; this matter pertains to the property address 5207 Wisconsin Avenue, NW (the property). The second floor of the property has a small kitchen and three (3) bathrooms, each having a toilet and sink, plus one has a urinal. The 3rd floor of the property has a kitchen and two (2) toilets. Mr. Voight indicated that he has managed the building since February 2018 and that the water and sewer bill for the property, generally, averages \$208.00 per billing cycle.

Mr. Voight stated that he did not receive a water and sewer bill for the property from DC Water in October, so he called the utility and was informed that the bill had been sent to the

previous building manager. Mr. Voight asserted that the previous building manager had left employment with the company in 2018 and that the contact information provided DC Water was changed in February 2018. Mr. Voight stated that on June 29, 2018, DC Water, again, contacted the former building manager, to give notice of high-water usage occurring in the building; Mr. Voight stated that he, again, updated the contact information with DC Water. Mr. Voight complained that the contact information was still wrong in November 2018 and he updated the information again. He stated that the DC Water service representative informed him that on-line access was available to him as of December.

Mr. Voight testified that he paid the water and sewer bill on November 29, 2018 by phone. He also stated that he had a plumber come out to the building and the plumber found and repaired a faucet leak. After the repair, Mr. Voight stated that he called DC Water and was told that water usage had returned to normal at 550 CCF. Mr. Voight asserted that normal for the building was 20 – 30 CCF per day.

Mr. Voight stated that he paid the water and sewer bill for November 2018. He testified that when the account was set up on-line, he saw that water usage at the building was still high. He testified that DC Water came out to the building on December 18, 2018 but the technician looked at the wrong water meter. He explained that two (2) water meters service the building and that the technician looked at the meter for the liquor store but the questioned water usage was on the other water meter which services the remaining parts of the building. Mr. Voight testified that he sent a plumber to the building on December 20, 2018 and the plumber found a second leak which the plumber repaired. Mr. Voight stated that he noticed that the water usage, was going down, however, he saw usage skyrocket on January 6, 2019. Mr. Voight testified that he was on-site at the property on January 10, 2019 and everything seemed to be fine and usage/bill was decreasing. He stated that on January 13, 2019, he saw no recorded usage occurring at the property. He relayed that he had also seen no recorded usage occurring at the property on September 3, 2018 when he checked the property's usage record and he knows that tenants were in the building and using the facilities. Mr. Voight testified that he took a screen shot of the usage or lack thereof on January 14, 2019 and that he saw no usage recorded on January 13th and 14th. He testified that he observed that recorded usage jumped to 20 CCU on January 14th. Mr. Voight stated that he added a valve, installed motion sensors on the water faucets, and re-built all of the toilets. After doing so, he stated that he saw random high-water usage recorded on February 24, 2019 and on February 26, 2019 and when he contacted DC Water regarding the high usage, he was told that it was possibly caused by irregular water flow or that water pressure was high.

Mr. Voight testified that on March 12, 2019, there was a break in the line of one toilet. He stated that he was told that such a break meant that a surge in water may have occurred even though no spike in usage is seen.

Mr. Voight asserted that he believes that there is a problem with the water meter at the property as evidenced by the meter failing to report two (2) days of water usage occurring. He further based his belief that the water meter is faulty upon the fact that he has had Six Thousand

Dollars (\$6,000.00) in improvements done to the plumbing at the property. Mr. Voight added that inconsistent water flow was possible as a cause as well of the high-water usage.

Ms. Wright testified that DC Water considers the charges to be valid. She stated that DC Water sent a technician to the property today (day of the hearing) to remove the water meter for testing, however, the test results are not available. She asks permission to supplement the record with the meter test results when the test results are available. Mr. Voight had no objection to leaving the record open for the utility to submit the meter test results and, as such, the Hearing Officer stated that the record would be held open pending receipt and submission of the meter test results.

Ms. Wright, referring to the meter usage log, started at September 11, 2018 and read that from midnight to 1:00 p.m. there was no usage and from 11:00 p.m., again, on September 11th until 11:00 a.m. on September 12th, there was no usage. She asserted that a pattern on no night usage is reflected continuing to September 20, 2018. She pointed out that on September 20, 2018, the dials on the water meter at the property started moving between 1:00 p.m. and 2:00 p.m. and continued until 22 CCF of water had registered on the water meter by September 21, 2018 at 4:00 p.m. She pointed out that the water meter started moving on September 21, 2018 at 5:00 p.m. and continued until September 23, 2018 at 2:00 p.m. reflecting 10 CCF of water having been used. She continued that water flowed without stoppage starting on December 23, 2018 between 1:00 p.m. and 2:00 p.m. until January 3, 2019 when no usage registered on the water meter.

Mr. Voight interjected that his plumber was at the property.

Ms. Wright asserted that water usage began between 8:00 a.m. and 9:00 a.m. on January 4, 2019 and continues without stoppage, except for one hour on January 5, 2019, and stops on January 6, 2019 between 10:00 p.m. and 11:00 p.m. Ms. Wright testified that water usage at the property was back to an on/off pattern between January 6, 2019 until January 12, 2019 when it stops at 5:00 p.m. until January 14, 2019 between 3:00 p.m. and 4:00 p.m.

Mr. Voight asserted that someone is generally in the building except in the wee hours of the night and, with respect to January 12 – 14, 2019, the property was in use.

Mr. Voight stated that DC Water was on-site at the property on February 5, 2019 and Ms. Wright responded that it might have been an equipment check.

Ms. Wright asserted that small spikes continue to be occurring at the property. She contended that, as of now, she believes that the charges are valid,

Mr. Voight asserted that, at the very least, he could have addressed the problem sooner if DC Water had not contacted the prior property manager when high water usage was detected, as opposed, to properly sending the alert to him, as the current property manager.

Ms. Wright requested the plumber's report brought by Mr. Voight. Mr. Voight submitted multiple invoices from R.L. Voight & Son, LLC plumbing and heating contractors. He indicated that the plumbing company was owned by his uncle. The invoice documented seven (7) trips to

the property by the plumber and reflected among various services that at least two (2) running toilets were found and repaired, the rebuilding of at least two (2) toilet tanks, the repair of more than one bathroom faucet, the installation of various valves, and installation of new valves and flush toilet kits. Additionally, Mr. Voight submitted copy of an email exchange between himself and the Chief Financial Officer of the plumbing company memorializing that the “Tod” said nothing is defective and that he removed and reinstalled and tightened everything, all should be good now and Mr. Voight noting that there was a spike in usage on February 27, 2019 and he “heard it running” and thought that it was fixed as of February 28th judging from usage decreasing.

Ms. Wright stated that she was not equipped to respond to the issue of whether surges in water flow/pressure at the property caused equipment malfunction.

Both parties acknowledged that neither had any further testimony or evidence; the Hearing Officer declared the hearing concluded but the record open pending submission of meter test results by DC Water and comments from both parties, if desired, after review of the test results.

Within minutes of Mr. Voight’s departure of the hearing room, Ms. Wright checked her computer and determined that the meter test results were available. As such, Ms. Wright gave the Hearing Officer the results of DC Water’s testing of the water meter which reflected that the water meter was determined to have an overall accuracy of 100.57%. Ms. Wright conveyed the meter test results to Mr. Voight by email on March 27, 2019 within minutes of the end of the hearing. In her email to the customer, Ms. Wright cited the American Water Works Association as setting the standard of acceptable water meter accuracy to be 98.50% to 101.50%. Ms. Wright further affirmed to the customer that DC Water stands by its position that the charges are valid. In an email exchange between Mr. Voight and Ms. Wright, the customer asserted that the meter was malfunctioning again and that for the fifth time this year, there was no usage registering on the water meter for a day and that there were tenants in the building and they were using water. Mr. Voight reiterated his assertion that inconsistent water flow was not addresses in the meter test report and that it is the culprit of the excessive water use as it is damaging his equipment. Mr. Voight requested the installation of a new meter and refund of the excessive money paid in addition to reimbursement for all of his plumbing expenses. In response, Ms. Wright wrote that the daily/hourly reads indicated that water registered on the meter and she explained that information available to a customer on the web site reflects readings every 24 hours whereas the information in house reports meter readings every hour. Ms. Wright explained the meter dial movement based upon the size of the meter at the property. She stated that there is no issue with the meter and that there is a new meter at the property, as the old meter was removed for testing.

Based upon the foregoing testimony and evidence adduced during the hearing, as well as the supplemental tests and comments by the parties submitted post-hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a commercial building owned by Voight Building LLC and managed by Ralph Voight. (Testimony of Ralph Voight)
2. The periods in dispute are four (4) billing cycles from September 11, 2018 to January 8, 2019. (Testimony of the parties)
3. DC Water sent out high water usage alerts regarding the property as well as the water and sewer bill for October 2018 to an individual (previous property manager) who no longer as of February 2018 served as property manager of the property and Mr. Voight had to repeatedly update his company's contact information with DC Water. (Testimony of Ralph Voight)
4. The customer established on-line access to its account in December 2018 and thereafter, Mr. Voight was able to monitor the property's water usage and he responded to spikes in water usage by sending a plumber to the property to investigate the usage and repair any detected problems. (Testimony of Ralph Voight; Invoices from R.L. Voight & Son, LLC dated 1/4/19, 2/4/19, 2/22/19, 2/28/19, 3/1/19 and 3/20/19)
5. The plumber sent to the property on various dates documented the detection and repair of plumbing defects to include: 3/12/18- checked for leak at toilet in 2nd floor men's bathroom- Flushmate bladder tank is leaking; 3/18/18- furnished and installed new Flushmate bladder tank in 2nd floor men's bathroom toilet tank; 12/20/2018- checked toilet in hall bath, it is running, turn water off to toilet and checked meter, meter not moving after turning off toilet; 1/3/2019- installed three Sloan Flushmate repair kits and braided toilet supply; 1/10/2019- installed new repair kits in second floor hallway bathroom toilets, rebuilt toilet tank in third floor office bathroom, install Fluidmaster fill valve, flush valve and tank to bowl gasket and both kit; 1/15/2019- installed two new lavy faucets in second floor hall bathrooms, rebuild toilet in third floor wine testing room, installed fluidmaster fill valve and flush valve; 1/18/2019- repair running toilet, installed new lavy faucet in large hallway bathroom. (Invoices from R.L. Voight & Son, LLC dated 1/4/19, 2/4/19, 2/22/19 and 3/20/19)
6. After repairs were performed at the property, the customer observed a decrease in water usage. (Testimony of Ralph Voight regarding work performed 12/20/18)
7. There were significant increases in registering water usage at the property during which continuous usage occurred for periods of time spanning one or two or three days at a time starting in September 2018 thru January 2019, except that there was continuous usage registering on the water meter between 9/23/2018 to 10/22/18, 10/23/2018 to 12/20/18, and, 12/23/2018 to 1/3/2019. (Testimony of Eileen Wright; DC Water Meter Read Log)
8. By observing water usage on the DC Water website, the customer saw five (5) days in which it appeared that no usage was registering on the water meter, even though the customer knew the property to be occupied and assumed that the tenants were using the facilities. (Testimony of Ralph Voight)
9. DC Water has access to hourly meter reads from the property and observed water being used daily at the property whereas the meter end dials can be seen moving every 10 Cu ft as opposed to every 100 Cu ft which can be viewed on the web site within 24 hour increments. (Testimony of Eileen Wright; DC Water Meter Read Log)

10. DC Water removed and tested the water meter from the property and the meter was determined to have 100.57% overall accuracy. (Testimony of Eileen Wright; Meter Test Results Report by DC Water)
11. DC Water installed a new water meter at the property when it removed the meter present during the periods in dispute, for testing. (Testimony of Eileen Wright)
12. There was a break in the line of one toilet at the property on 3/12/19 and it was speculated by a DC Water service representative in conversation with the customer, that the break might have been caused by a surge in water even though no spike in water usage was seen. (Testimony of Ralph Voight)
13. Mr. Voight believes that water surge and inconsistent water flow were possible causes of increased water usage at the property, however, no evidence was presented in support of his belief and DC Water did not address water surge or water flow in its investigation. (Testimony of Ralph Voight and Eileen Wright)

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. The repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunction water-cooled air conditioning equipment, are the responsibility of the owner or occupant. (21 DCMR 406.1)
4. If the investigation discloses leaking faucets, leaking fixtures, or similar leaks, no adjustment will be made to the bill for any portion of the excessive consumption attributable to those leaks. (21 DCMR 406.2)
5. 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 failed to establish that more likely than not the bill in dispute was wrong or for some other reason, the customer should not be responsible for payment of the water and sewer charges.

The customer sought installation of a new meter and refund of the excessive money paid in addition to reimbursement for all of the plumbing expenses paid by the customer.

The customer presented various invoices evidencing plumbing work performed at the property. The invoices reflected, in addition to upgrades made to the plumbing of the property, that the plumber, on site on dates reflected, found running toilets, defective faucets and a need for installation of various valves at the property. The customer testified, more than once, that after repairs were performed at the property, he observed that increased water consumption declined. DC Water presented meter reads from the property which showed various periods of increased water usage. Likewise, the customer's evidence through the plumbing invoices, showed that the plumber found plumbing defects at the property on several visits which occurred during the period in dispute and the plumber wrote that after repairs were performed, no movement was observed on the water meter. The Hearing Officer concludes that the plumbing defects identified by the plumber and repaired were most likely the cause of spikes in water usage at the property. (See, Findings of Fact 5, 6, and 7) And pursuant to 21 DCMR 406.1, if leaking faucets, leaking fixtures, or similar leaks caused increased water consumption or loss of water, no adjustment will be made to a customer's bill for any portion of the excessive consumption attributable to those leaks. Here, the customer acknowledged that after plumbing repairs were performed, he observed decline(s) in water usage at the property.

With respect to the customer's request for reimbursement of all plumbing expenses. The evidence established that the plumber on various dates/visits to the property found and repaired plumbing defects such as running toilets and clogged sinks. The repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunction water-cooled air conditioning equipment, are the responsibility of the owner or occupant. (See, 21 DCMR 406.1) Likewise, DC Water is not responsible for the upkeep and improvement of the customer's property, so all improvements such as new flush kits and sensors to save water and new valves and faucets are the responsibility of the property owner. No basis exists in support of the customer's reimbursement request for plumbing expenses.

The customer further requested the installation of a new water meter and DC Water submitted that it placed a new water meter at the property at the time that the old water meter was removed for testing. As such, the request for a new water meter has been satisfied and is now moot.

The evidence and testimony presented during the hearing established that DC Water billed the customer during the periods in dispute based upon hourly meter reads transmitted from the property by a MTU device on the water meter. DC Water tested the water meter and the meter was determined to be registering water usage within accepted accuracy range. The customer speculated that a water surge or inconsistent water flow was the culprit causing increased water usage at the property. The evidence and testimony, however, did not provide any support for the speculation. First, the suggestion by the service technician that a break in the line of one toilet might have been due to a surge in water was made in response to an event that occurred on March 12, 2019 which is outside of the period in dispute. Moreover, the customer specifically testified that the break in the water line did not result in a surge in water or increased water usage. As such, the issue dealt with in this matter, i.e. spikes in water usage, did not come into play with respect to any suggestion regarding a water surge. Finally, there was not evidence of inconsistent water flow occurring at the property at any time and specifically, the mention of water surge or inconsistent water flow is not mentioned by the customer's plumber in any invoice, email or report entered into evidence.

DC Water investigated the customer's challenge of the bills and determined that no basis exists to adjust the account and that the charges are valid. Based upon the evidence and testimony presented, the determination by DC Water is hereby AFFIRMED.

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

Date: May 14, 2019

Copy to:

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